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1899.
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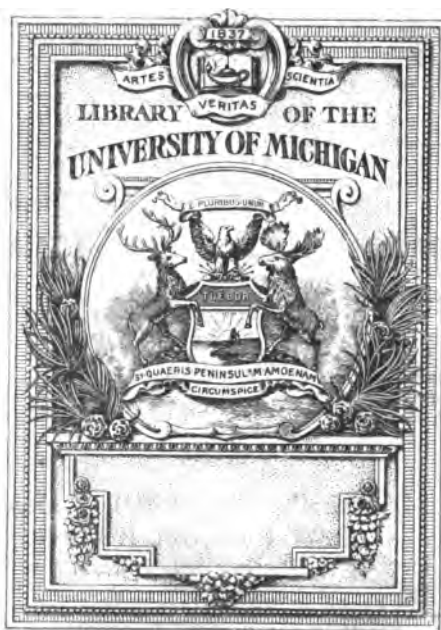
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THE
London Government Act

1899:

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WITH EXPLANATORY NOTES
EMBODYING THE INCORPORATED ENACTMENTS,
WITH
AN INTRODUCTION AND INDEX.

BY
G. P. WARNER TERRY
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,
Vestry Clerk of St. Margaret, Westminster,
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AND
P. BARTLETT MORLE,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

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PREFACE.

THE method adopted in the London Government Act, 1899, of legislating by reference to previous enactments, renders the statute unintelligible without some guide; and in preparing this Edition the Authors have endeavoured to place in the hands of those interested in London Government a manual which may enable the provisions of the Act to be better understood, by showing under each section and sub-section the enactments applied, together with such explanatory notes as the difficulty of the subject appeared to require.

G. P. W. T.

P. B. M.

TEMPLE,

16th August, 1899.

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1899/10/11

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TABLE OF ABBREVIATIONS.



L. C. C.	London County Council.
L. C. C. (G. P.) Acts ...	London County Council (General Powers) Acts.
L. G. A., 1888	Local Government Act, 1888.
L. G. A., 1894	Local Government Act, 1894.
L. G. B.	Local Government Board.
Lon. G. A.	London Government Act, 1899.
M. C. A., 1882	Municipal Corporations Act, 1882.
M. E. (C. P.) A., 1884...	Municipal Elections (Corrupt and Illegal Practices) Act, 1884.
M. M. A., 1855	Metropolis Management Act, 1855.
M. M. A. A., 1856	Metropolis Management Amendment Act, 1856.
M. M. Acts	Metropolis Management Acts.
P. H. A., 1875	Public Health Act, 1875.
P. H. A., 1891	Public Health (London) Act, 1891.
P. L. (A.) A., 1834, 1844.	Poor Law (Amendment) Acts, 1834, 1844.
R. C. A. L.	Royal Commission on the Amalgamation of the City and County of London.
R. P. Acts	Representation of the People Acts, 1832, 1867, 1884.
Reg. Act, 1843	Parliamentary Voters' Registration Act, 1843.
Reg. Act, 1865	County Voters' Registration Act, 1865.
Reg. Act, 1868	Parliamentary Electors' Registration Act, 1868.
Reg. Act, 1878	Parliamentary and Municipal Registration Act, 1878.
Reg. Act, 1885	Registration Act, 1885.
U. A. Acts	Union Assessment Acts.
V. A. E. O.	Vestrymen and Auditors (London) Election Order, 1898.
V. (M.) A.	Valuation (Metropolis) Act, 1869.

INTRODUCTION.



To understand properly the structure of the municipal government of that part of London which lies outside the City, it is necessary to bear in mind that the only true explanation of the present form of that government is to be found in its history. Unless this fact is recognized the government of London will appear to be in many respects unintelligible.

The history of the County of London is the history of the growth and development of the various parishes composing it. As the municipal needs of parishes increased, local Acts were passed the provisions of which varied with the varying circumstances and requirements; other statutes imposed duties of local government upon commissioners for different parts of the Metropolis; whilst the absence of a clear line of demarcation between the ecclesiastical and the civil life of the parish found the same officers and bodies discharging ecclesiastical as well as what are now regarded as wholly different functions. For example, the churchwardens of the parish down to the coming into force of the Act which is the subject of this volume are not only the guardians of the fabric of the Church, but *ex officio* members of an administrative vestry; and the elective vestry not only administer the affairs of the Church, but in many instances make the poor rate. Moreover, the passing of Hobhouse's Act, a permissive statute enabling representative bodies to supersede meetings of inhabitants, added still further to the diversity in the mode of government.

The first general legislation affecting the parochial government of the Metropolis was the passing of the Metropolis Management

Acts of 1855, 1856, and 1862. Those Acts were based upon two principles. The one was that the parish should be treated as the local government unit, and this principle was carried out by the simplification and consolidation to a certain extent of the local government of the parishes. The other was that the government of London should be regarded as partly local and partly central in character. By the Act of 1855 an elective vestry was constituted in each metropolitan parish: in the larger parishes the vestries were entrusted with powers of municipal government, whilst—speaking generally—the smaller parishes, or parishes then but sparsely populated, were grouped into districts, for each of which a board of works, consisting of representatives elected by the elective vestries, but not necessarily from among themselves, was similarly vested with municipal powers. Beyond the duty of electing these representatives and of administering the affairs of the Church (where previously administered by an open Vestry or meeting of inhabitants), the latter vestries have never had any municipal powers or duties. A central body called the Metropolitan Board of Works, consisting of representatives of the Vestries and District Boards and of the Woolwich Local Board (*a*), was constituted to succeed the Metropolitan Commissioners of Sewers, and upon this Board were conferred numerous powers of local government which Parliament considered could most conveniently be exercised by a central body.

The Metropolis Management Acts transferred to the Vestries and District Boards all powers relating to highways, local improvements, sewers (other than main sewers) and drains, paving, dust removal, obstructions, lighting, street watering and cleansing, &c., then vested in Commissioners, Committees, Boards, Trustees and other bodies; and generally conferred wider powers upon the Vestries and District Boards in relation to these matters. These bodies were also entrusted with powers of sanitary administration by the Nuisances Removal Acts, which in due time were repealed when

(*a*) See p. 159, *post*.

the law on this subject was codified by the Public Health (London) Act of 1891. Other legislation conferred additional powers of municipal government, notably, the Sale of Food and Drugs Acts, the Housing of the Working Classes Act, the Factory and Workshop Acts, the Electric Lighting Acts, the Metropolis Water Acts, and the Metropolis Open Spaces Acts. By the Metropolis Management Amendment Act, 1856, the powers and duties relating to the affairs of the Church (except the power of making Church rates, the management or relief of the poor, or the administration of any money applicable to the relief of the poor), theretofore vested in any open or elected vestry or meeting of inhabitants, were also transferred to the elective vestries, except where such powers were vested in any guardians, governors, or trustees, when they were to continue to be so vested. All the powers of vestries are by the London Government Act to be vested in the Councils of the Boroughs to be established under the Act, except powers and duties relating to the affairs of the Church, which are to be again vested in the inhabitants.

In certain cases the Vestries act as Overseers for rating purposes, and in these cases the powers and duties of Overseers in relation to rating and assessment are exercised and performed by such Vestries. By section 11 of the London Government Act the Borough Council will be the Overseers for all purposes for every parish in their Borough subject to the proviso contained in the section (b).

The provisions of the Local Government Act of 1894, with respect to the qualifications of the electors, and of the persons to be elected, and with respect to the mode of conducting the elections, were applied to the Metropolis. That Act did not of itself directly increase the powers of Vestries and District Boards, but it entitled them to make application to the Local Government Board for Orders conferring upon them the powers of appointing Overseers, and any powers of a parish council (c).

(b) See p. 103.

(c) Pages 57, 137.

Turning to the central body created by the Metropolis Management Acts, the Metropolitan Board of Works by the Act of 1855 was vested with powers relating to main sewers (including the control of Vestries and District Boards in the construction of sewers), the naming of streets, numbering of houses, street improvements, lines of frontage, local loans and numerous other matters. Subsequent legislation has, as in the case of local authorities, considerably amended and extended these powers, Parliament, when conferring new municipal powers, favouring the central rather than the local authority. By the Local Government Act, 1888, the administrative County of London was created and the London County Council was constituted; and to this Council were transferred the powers and duties of the Metropolitan Board of Works and the administrative powers of justices in quarter sessions.

It is impossible to set out exhaustively the powers and duties of the London County Council in addition to those mentioned. The most important relate to the following matters:—Building; public health; embankments and prevention of floods; fire brigade; metropolitan commons, parks and open spaces; licensing of theatres (except within the jurisdiction of the Lord Chamberlain), music halls and racecourses; bridges; water supply; infant life protection; storage of petroleum and explosives; contagious diseases (animals); coroners; tramways; testing the purity of gas; pauper lunatic asylums; reformatory and industrial schools; making bye-laws; weights and measures; pollution of rivers; dangerous structures; unhealthy areas; provision of lodging houses for the working classes; licensing of offensive trades and slaughter-houses; technical instruction; overhead wires; shop hours, &c.

These powers are not substantially affected by the London Government Act.

The London County Council also possesses certain powers of control over, and of acting in default of, the local authorities, and they may in certain cases be appealed to against orders of the local authorities. The London Government Act does not deprive the Council of these powers.

The theory of the London Government Act is simple. The unit of local government ceases to be the parish, although the parish is retained as the unit for rating purposes, and the administrative County of London outside the City is divided into twenty-eight areas, each of which is to be a Borough and for each of which a Borough Council is to be formed. Sixteen of these areas are single parishes. The Borough Council will be constituted of a mayor, aldermen and councillors, not to exceed seventy-one in all, the aldermen to be one-sixth of the number of councillors. Women are not eligible for any of these offices. The qualifications for these corporate offices are fully described in the notes; but it may be pointed out here that the application of two different enactments to the mayor and aldermen on the one hand and to the councillors on the other, and the application of the same provisions of the Municipal Corporations Act, in the latter case modified, in the former not, by two different enactments, may lead to some difficulties in practice. The first elections of the councillors are to be on the 1st November, 1900, and of the mayor and aldermen on the 9th November, 1900. The term of office of a mayor will be one year, of an alderman six years, and of a councillor three years. One-third of the councillors will retire annually, but an Order of the Local Government Board on the application of any Council may prescribe simultaneous triennial retirement instead. In any case one-half the number of the aldermen will retire every third year.

The Act, then, consolidates municipal government within the Borough just as the Act of 1855 partly consolidated municipal government within the parish. Where the adoptive Acts (*d*) have been adopted, the Council are to administer them in place of the subsidiary bodies who have heretofore done so, that is to say, where an Order of the Local Government Board under the Local Government Act, 1894, has not placed their administration in the hands of the Vestry or District Board. When any of the

(*d*) See p. 56.

adoptive Acts are adopted in future the Borough Council will be the administrative authority, as in the case of provincial boroughs.

Other local bodies may be abolished by scheme, and their powers transferred to the Borough Council. Certain small powers are transferred to the Councils from the London County Council; certain other powers of the London County Council may also be exercised by the Borough Councils; and provision is made for future transfers. Additional powers and duties are conferred on the Borough Council, the most important being that main roads are to vest in the Borough Councils concerned, and to be maintained at the expense of the County Council by those Borough Councils; and the Borough Councils are to have powers of promoting as well as of opposing Bills in Parliament.

The committees of Borough Councils will have wider powers than the committees of the Vestries and District Boards; and each council is to appoint a finance committee, who will have large powers of financial control. In future, only one rate will be levied in the Borough: hitherto there have been many rates in name, although all were levied upon the basis of the poor rate. This consolidated rate, to be known as the "General Rate," will be levied as if it were the poor rate. As already stated, Borough Councils are to be the Overseers, but upon the Town Clerk are imposed some of their duties, with the object, it may be presumed, of securing personal responsibility. The Town Clerk will also be clerk to the Assessment Committee, where that committee will be appointed by the Borough Council. The accounts of the Borough Councils are to be audited in the same way as the accounts of the London County Council. The incumbent and churchwardens are not to be *ex officio* members of the Borough Councils: these officers are *ex officio* members of elective vestries, and, until the Local Government Act, 1894, the incumbent was *ex officio* chairman of the Vestry. Churchwardens are to cease to be Overseers. Provision is made for the transfer of existing officers to the Borough Council and for their compensation in certain cases.

The provisions of the Act are to be carried into effect by Orders in Council, Schemes, Provisional Orders of the Local Government Board, and ordinary Orders of the Local Government Board. This delegation of power has some precedent in the Municipal Corporations Act, 1882, under which, on the incorporation of a new Borough, a scheme adjusts the powers and duties of existing local authorities. These provisions of the Municipal Corporations Act, 1882, are incorporated for the purposes of this Act.

The object with which the Act has been passed was expressed by the Lord President of the Council in moving the second reading in the House of Lords. The Duke of Devonshire said:—"I believe that it will be accepted by the great majority of the inhabitants of London as a step, and a very long step, in the direction of reforming their local institutions and placing them upon a level not inferior to that on which municipal institutions in the other great cities and towns in this kingdom already stand."

ADDENDA.

Pages 5 and 150—City of Westminster.

The Times of July 29th, 1899, p. 12, col. 1, announced that "The Queen has been pleased to direct that, as soon as the necessary arrangements under the London Government Act have been completed, there shall be confirmed to the Borough of Westminster, as constituted under that Act, the title of City, originally conferred upon Westminster by King Henry the Eighth."

This appears to point to a mere confirmation of the title; see article by late Prof. Freeman in *Macmillan's Magazine*, May, 1889, p. 29.

The letters patent cannot presumably be issued until the proposed borough has been formed.

Page 9—Wards.—For full particulars as to existing wards, see London Statistics, Vol. VIII., p. 525. The maximum number of wards possible in a borough will be twenty.

Page 26, line 15—for "relates" read "relate."

65, line 16—for "volume" read "column."

150—for "Burnett" read "Burnet."

Page 166—Church Rate.—A return of the church rates (including rectors' rates) at present levied in London, will be found in Vol. VIII. of London Statistics, pp. 518—519.

THE
LONDON GOVERNMENT ACT, 1899.
(62 & 63 VICT. c. 14.)

*An Act to make better provision for Local Government in
London.* [13th July, 1899.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Section 1.

ESTABLISHMENT OF METROPOLITAN BOROUGHES.

1. *Establishment of metropolitan boroughs in London.*—The whole of the administrative county of London, exclusive of the city of London, shall be divided into metropolitan boroughs (in this Act referred to as boroughs), and for that purpose it shall be lawful for her Majesty by Order in Council, subject to and in accordance with this Act, to form each of the areas mentioned in the First Schedule to this Act into a separate borough, subject, nevertheless, to such alteration of area as may be required to give effect to the provisions of this Act, and subject also to such adjustment of boundaries as may appear to her Majesty in Council expedient for simplification or convenience of administration, and to establish and incorporate a council for each of the boroughs so formed.

Object of the Act.—This section contains a statement of the object of the Act, namely, the division of the whole of the county of London into municipal boroughs.

No borough is created, or borough council established and incorporated *by* the Act; each borough is to be formed, &c., by Order in Council *under* the Act; and the areas mentioned in the First Schedule, p. 209, *post*, are subject to alterations and adjustments to be made under this section and sects. 17 to 21, *post*.

Short Title.—This is “The London Government Act, 1899”: sect. 35 (1), p. 208, *post*.

Commencement of the Act.—So far as the new borough councils are concerned, the Act does not come into force until “the appointed day,” defined sect. 33 (1), Lon. G. A., 1899; which see, and note thereon, p. 202, *post*. The first elections are to be held on the 1st November, 1900, or as soon as practicable thereafter as may be fixed by the Lord President of the Council. The ordinary day of election in succeeding years will be, as in the provincial boroughs, the 1st, or (if that day is a Sunday) the 2nd November, annually, or triennially in the event of an order being made by the L. G. B. under sect. 2 (8), Lon. G. A., 1899, p. 45, *post*. The ordinary day of election of mayor and aldermen will be the ninth November, as with the provincial borough councils, and a corresponding date will be fixed for the first elections. The coming into force in the autumn of 1900 of the lists of voters, as revised in that year, is to be accelerated for the purpose of the first elections by sect. 27 (3); and after 1900 by sect. 3 (4). By sect. 27 (4), persons who were members of vestries and district boards at the time of the passing of the Act are continued in office until the day on which the first borough councillors elected under the Act come into office. This provision obviates the need for the usual vestry elections which would otherwise have taken place in May, 1900, pursuant to sect. 7, M. M. A., 1855; and, except for the purpose of filling casual vacancies, no further elections will be held. And as to casual vacancies, see the restriction contained in sect. 48 (4) (b), L. G. A., 1894, p. 23, *post*.

Apart, then, from the provisions depending upon the “appointed day,” or any appointment by the Lord President in regard thereto, the new Act came into operation on the 13th July, 1899, the date of the Royal Assent. See the Acts of Parl. (Commencement) Act, 1793, 33 Geo. III. c. 13. The Committee of Council and their Commissioners will therefore be able to proceed at once with the preparation of the Orders in Council and schemes contemplated by the statute. As to the purposes for which Orders in Council and schemes are to be made, see the notes on sects. 15 and 16, pp. 131 and 134, *post*.

Extent of the Act.—The Act applies primarily to “the administrative county of London, exclusive of the city of London.” These terms are explained in the succeeding note. But sect. 18, *post*, empowers the Committee of Council to alter the area so described by Orders in Council. Sect. 17 provides that a parish shall not be situate partly in a borough and partly in the City (sub-sect. 1). Sub-sect. 5 of sect. 18 provides that nothing in that section, which relates to detached parts, is to apply to the City. Sect. 19 removes anomalies attaching to Woolwich, sect. 20 deals with Penge, and sect. 21 with Kensington Palace.

Administrative County of London.—The administrative county of London was created by the L. G. A., 1888, out of portions of the counties of Middlesex, Surrey, and Kent. By sect. 40 (1) of that Act “the metropolis shall . . . be an administrative county for the purposes of this Act by the name of the administrative county of London”; and by sect. 100, the expression “metropolis” means the city of London and the parishes and places mentioned in Schedules A., B., and C. to the M. M. A., 1855 (18 & 19 Vict. c. 120), as amended by subsequent Acts. Under the Act of 1855, the parishes (outside and exclusive of those within the city of London) which were taken to constitute “the metropolis” were divided into two classes, respectively set out in Schedule A. and Schedule B. to that Act, together with a third class of extra-parochial places in Schedule C. The parishes in Schedule A. were to be governed by a vestry constituted and incorporated by the Act, but those in Schedule B. were grouped into districts, to be administered by district boards of works. By sect. 34 of the Lon. G. A., p. 205, *post*, the expression “administrative vestry” means a vestry elected for a parish specified in Schedule A., and “elective vestry” means any vestry elected under the Act of 1855. A vestry in Schedule B., though elected in the same manner, had for its main function to elect representatives of the parish on the board of works for the district of which it formed a part: 25 & 26 Vict. c. 102, s. 40.

The amending enactments which affect the arrangement of these parishes and districts are the Metropolis Management Amendment Act, 1885 (48 & 49 Vict. c. 33, s. 3), the Metropolis Management (Battersea and Westminster) Act, 1887 (50 & 51 Vict. c. 17), and the Metropolis Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55). In effect Schedule A. now comprises thirty parishes and Schedule B. forty-two parishes, the latter being grouped into twelve districts. Under the M. M. A., 1855, the city of London con-

tinued to be a county of itself (*a*), and by the L. G. A., 1888, the county of the city of London remained a county for non-administrative purposes,—that is, for the purposes of quarter sessions, justices, militia, coroner, sheriffs, &c. For all other purposes it was merged in the administrative county of London. For non-administrative purposes the metropolis outside the city of London was constituted a county by the name of “the county of London”: sect. 40 (2). Thus for administrative purposes under the L. G. A., 1888, the whole metropolis is one county, called the administrative county of London; but for non-administrative purposes there are two counties, the county of London and the county of the city of London. It is the non-administrative county or county of London that is to be divided into “metropolitan boroughs,” and this expression of “county of London” is used in sect. 4 (1) of the Lon. G. A., p. 48, *post*, as synonymous with “the administrative county of London, exclusive of the city of London.”

Metropolitan Boroughs.—This section does not of itself create any boroughs, borough councils, or corporations, but empowers the Queen by Order in Council to divide the county of London into boroughs with satisfactory (sect. 17 (2), p. 154, *post*) areas. Commissioners to be appointed by a Committee of the Privy Council (sect. 15) are to give effect to these provisions by Orders and schemes, for which purpose they are endowed with the necessary authority by other provisions in the Act, which are more conveniently discussed under the respective sections. *Inter alia*, Part XI. of the M. C. A., 1882, is for this purpose extended to the county of London by sect. 16 (1) (b) of the Act, whereby the commissioners may do all things (saving as to police, and regard being had to consistency) (*b*) for the areas which are to be formed into boroughs, as the Privy Council may do by scheme for any town or district and for any of the purposes of such Part XI. outside the metropolis (*c*).

But there will be, nevertheless, two material differences between metropolitan and provincial borough councils. Sect. 210 of the M. C. A., 1882, provides that if on a petition from the inhabitant householders of any town or district in England praying for the grant of a charter of incorporation her Majesty, by the advice of her Privy Council, thinks fit by charter to create such town or district a municipal borough, and to incorporate the inhabitants, it shall be lawful for her

(*a*) See 3 Geo. I. c. 5.

(*b*) See p. 135, *post*.

(*c*) Part XI. of M. C. A., 1882, so far as material, is set out p. 142, *post*.

Majesty by the charter to extend to the municipal borough and the inhabitants thereof so incorporated the provisions of the M. C. Acts. Here, it will be noticed, the borough is created and the *inhabitants* thereof are incorporated by *charter*. The grant of a charter is, of course, an exercise of the Royal Prerogative. But statutory authority was necessary in order to extend to any new provincial borough the provisions of the M. C. Acts (*d*), and such authority is conferred by the section quoted. This plan has not been followed in the case of London. The metropolitan boroughs are not to be created by charter, the inhabitants are not to be incorporated, but the new boroughs are to be formed by Orders in Council, and the incorporation is not of the inhabitants but of the borough councils.

By sect. 7 of the M. C. A. the municipal corporation is "the body corporate constituted by the incorporation of the inhabitants of a borough," who (sect. 10) act by and through an elected council, consisting of mayor, aldermen and councillors.

This, similarly, only obtains with the Corporation of the City. But it is understood that the new borough of Westminster to be created by this Act is to receive a charter incorporating the inhabitants of the borough and creating the borough a city (*e*). Elsewhere in the county of London each metropolitan council itself will be the incorporated body in like manner as was its predecessor the vestry or district board (sect. 42, M. M. A., 1855), and as are county councils, school boards, district councils and similar statutory authorities.

And by sect. 31 (1), p. 195, *post*, expressions in any Act passed prior to 13th July, 1899, referring to a borough are not to be construed as referring to a metropolitan borough unless applied thereto by this Act or subsequent legislation.

An Order in Council is by sect. 27 to give each of the boroughs an appropriate name, fix the days, years and times for the retirement of the first aldermen and councillors, and make such temporary modifications of the provisions of the Act as may be necessary in the case of the first constitution of the borough councils.

City of London.—The position of the City is unique. It is a municipal borough, but differs as such not only from every other part or district of the metropolis, but also from every other municipality in the kingdom, inasmuch as it was excluded from the operation of the Municipal Corporations Act, 1835, and is not subject to

(*d*) In 1841 it was held that the grant of a charter of incorporation was an exercise of the common law prerogative of the Crown, although it extended to the new corporation the powers of the 5 & 6 Will. IV. c. 76, which the Crown had power to do only by virtue of 7 Will. IV. & 1 Vict. c. 78. (*Rutter v. Chapman*, 8 M. & W. 1.)

(*e*) But see note to sect. 16 (3) (b) at p. 151, *post*.

the consolidating Act of 1882. The corporation of the City has, under 2 William & Mary, sess. 1, c. 8, the title of "the mayor, commonalty, and citizens of the City of London," and, as in other municipal boroughs outside the metropolis, consists of all the citizens, though the word "corporation" is popularly applied to the governing body, viz., the common council, composed of the lord mayor, the aldermen, and the councillors. Herein the new municipal corporations will differ from it, as is shown in the preceding note (p. 5, *supra*). The aldermen are elected directly by the citizens registered in the different wards, and not by the council, as in all other municipal corporations. The lord mayor is annually elected by the mayor and aldermen from two candidates nominated by the common hall. His election (unlike that of mayors under the Act of 1882 and under this Act) is subject to the approval of the Crown. As "the City" never came under the reforms effected in 1835, it naturally contains many other survivals. The smallness of its area (*f*); its 28 wards (varying in size from Farringdon Without, with 145 acres and 11,550 population, to Cornhill, of about 4 acres and 200 population); its 112 parishes (ranging from St. Botolph's, Bishopsgate, 44½ acres and 1,744 population, to St. John the Evangelist, of four-fifths of an acre and a resident population of 17 persons); its administration and government; its system of rating; all show special features, which have been the subject of inquiry by a succession of Royal Commissions and Parliamentary Committees. The reforms that have been made have emanated from itself through local Acts. Under one of these (12 & 13 Vict. c. xciv. s. 5, 1849), the franchise for electing the common councillors, instead of being confined to the liverymen who were freemen, was extended to the parliamentary electors. Again, until 1897 the highway and sanitary powers were exercised by a body called the Commissioners of Sewers, who were appointed annually by the Common Council, but when appointed exercised independently certain powers of municipal government—such as paving, lighting, improving, cleansing, public health—and levied a rate for these purposes. In fact, they held a similar position to the vestries and district boards. By the City of London Sewers Act, 1897 (60 & 61 Vict. c. cxxxiii.), this Commission was dissolved, and the execution of their powers, authorities and duties transferred to the Common Council. As already stated, the City has acquired all the attributes of a county (*g*), and possesses separately a sheriff, a coroner, justices and court of quarter sessions, courts for civil suits, lieutenantancy and militia, police force, and certain county administrative powers. Under sect. 40 (3) of the L. G. A., 1888, the Corporation may assent to the surrender of its separate jurisdiction of justices. The City enjoys a number of exemptions from control by, or appeal to, the London County Council, as, *e.g.*, from bye-laws as to construction of sewers, except as to main drainage (25 & 26 Vict. c. 102, s. 83; 53 & 54 Vict. c. 66, s. 8); under London Building Act, 1894 (57 & 58 Vict. c. cxxiii. ss. 30, 84, 164, 165); and under Public Health (London) Act, 1891, s. 133. The Common Council are the authority for the execution within the City of the whole of the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70, s. 92, and 1st Sched.); also for the Factory and Workshop Acts, 1878 (41 Vict. c. 16, s. 96) and 1883 (46 & 47 Vict. c. 53, s. 18), the Alkali, &c. Works Regulation Act, 1881 (44 & 45 Vict. c. 37, s. 27), Sale of Food and Drugs Acts, 1875 and 1879, Burial Act, 1852 (15 & 16 Vict. c. 85), and City of London Burial Act, 1857 (20 & 21 Vict. c. 35). The Common Lodging Houses Acts, 1851 and 1853 (14 & 15 Vict. c. 28; 16 & 17 Vict. c. 41), do not extend to the City.

Having regard to sect. 17 (1) of the Lon. G. A., certain questions are likely to arise before the Commissioners to be appointed under sect. 15 in regard to boundaries. The City Sewers Act, 1848, s. 262, enacts that "the word 'City' shall mean the City of London, and the liberties thereof, and shall include such parts of Holborn, the Minorities, and Aldersgate Street as are or have been usually treated as being within the liberties of the City, and the courts and alleys leading into the same or communicating therewith, and also the north side of Eldon Street, formerly called Broker Row, Moorfields, and the courts and alleys leading into the same or com-

(*f*) The City contains 670·5 acres, 9,655 houses, and a resident population of 31,108.

(*g*) See 3 Geo. I. c. 5.

municating therewith, and all precincts and places within the City of London and the liberties thereof." Nothing in sect. 18 (5), Lon. G. A., which relates to detached parts of parishes, shall apply to the City. Sect. 250 of the M. M. A., 1855, enacted that "the City of London shall be deemed to include all parts now within the jurisdiction of the Commissioners of Sewers for the City of London." As already stated, the jurisdiction of the Commission of Sewers is now that of the Common Council.

See L. C. C. Return, London Local Areas, No. 426; 1898; also similar return in Vol. II. of Report of R. C. A. L. as App. XIX. p. 649, Parly. Paper, C. 7493. Reference should also be made to the statement handed in to the R. C. A. L. by the town clerk as to the origin, position, powers, duties, and finance of the Corporation of London: Vol. II. *ibid.* pp. 19 *et seq.*

Although sect. 1 excludes the City of London, subsequent sections for certain purposes bring the City within the operation of the Act. By sect. 5 (4), the L. G. B. may, on the joint application of the L. C. C. and the Common Council, transfer any power from or to either body. Sect. 7 (3) places the Common Council in the same position as a borough council in regard to the expenses incidental to any transfer. Sect. 16 (3) confers upon the City authorities a *locus standi* in regard to any scheme that may be made under the Act so far as it may relate to any powers exercisable by them within the ancient borough of Southwark. Except as to areas nothing in the Act is to affect the London (Equalisation of Rates) Act, 1894, under which the City contributes to the equalisation fund. (See sect. 31 (4), p. 197, *post.*)

See, further, G. Norton's *Commentaries on the Hist., Const. and Chartered Franchises of the City of London* (1869); Northouck's *New Hist. London* (1773); W. Bohun, *Privilegia Londini* (1723); Introd. to W. de Grey Birch's *Historical Charters of City of London* (1887); Stow and Maitland; Carlisle's *Topog. Dict.*, tit. London.

Alteration of Area.—By sects. 17, 18, 20, and 21, *post*, various alterations of area are contemplated, and the Orders in Council referred to will be made subject to such alterations. As to the position of the hamlet of Knightsbridge, see sect. 18 (1), and notes to sect. 21, *post*.

Adjustment of Boundaries.—Apart from the alterations of area provided for expressly by the Act, her Majesty in Council is empowered to make such adjustment of boundaries as may appear to be expedient for simplification or convenience of administration. A reference to a map of the boroughs to be created upon the basis of the existing areas of parishes, &c., will show that certain portions and strips of area might be conveniently merged with the appropriate borough, *e.g.*, the portion of Camberwell south of Camberwell New Road (containing Knatchbull Road, Flodden Road, &c.), almost surrounded by Lambeth, might be attached to Lambeth; and the tongue of land belonging to Battersea running some distance south of Belle-ville Road might be attached to Wandsworth. Remark also the boot-shaped part of Kensington which extends along the Brompton Road to Sloane Street. Opportunity might be taken under this provision to adjust boundaries where they sever the curtilage of any house, &c. See also sect. 16 (1) (d), p. 139, *post*.

Section 2.

CONSTITUTION OF BOROUGH COUNCILS.

2. Constitution of borough councils.]—(1.) The council of each borough shall consist of a mayor, aldermen, and councillors. Provided that no woman shall be eligible for any such office.

Constitution of the Borough Council.—This sub-section follows sect. 10 (2) of the M. C. A., 1882. By sub-sect. (4), *infra*, the law relating to the constitution of administrative vestries, except as otherwise provided by or under this Act, applies in the case of the new borough councils; and by sect. 31 (2), any enactment in any Act, whether general or local, referring to an authority whose powers or duties are transferred by or under this Act to a borough council, shall be construed with the necessary modifications. But by sub-sect. 1 of sect. 31 where any Act passed before the passing of this Act contains expressions referring to a borough, those expressions are not to be construed as referring to a metropolitan borough unless expressly applied.

An appropriate name is to be given to each of the metropolitan boroughs by Order in Council: sect. 27 (1) (a).

As to first and subsequent elections of metropolitan mayors, aldermen and councillors, see sect. 3; retirement of first aldermen and councillors, sect. 27 (1) (b); term of office and retirement of mayor, sect. 15 (3), M. C. A., 1882, p. 13, *post*; term of office and retirement of aldermen, sect. 14, M. C. A., 1882, p. 12, *post*; number of aldermen, sect. 2 (3), Lon. G. A., p. 10, *post*; and as to the first meetings of borough councils, see sect. 27 (1) (c), p. 175, *post*. As to the mayor's purse, see sect. 15 (4), M. C. A., 1882, p. 20, *post*.

Women.—It will be noticed that women are not eligible for the office of either mayor or aldermen or councillors. Women were by the L. G. A., 1894, eligible as vestrymen. This proviso assimilates the law with that applying to provincial municipal boroughs and to county councils. Women, if otherwise qualified, are, however, eligible as electors: see pp. 31 and 33, *post*.

2—(2.) An Order in Council under this Act shall fix the number of councillors, and fix the number and boundaries of the wards, and shall assign the number of councillors to each ward, that number being divisible by three, and regard being had to the rateable value as well as to the population of the wards.

Number of Councillors; Wards.—This provision takes the place of the provisions contained in the M. M. A., 1855, ss. 5 and 33, the Metropolis Management Amendment Act, 1862, s. 41, and the L. C. C. (G. P.) A., 1893, s. 15, and the L. C. C. (G. P.) A., 1895, s. 42, which sections contain the old law on the subject, and are expressly repealed by this Act. (See sect. 35 and Third Schedule, p. 215, *post*.)

The L. G. B. have, under sect. 26, p. 174, *post*, power hereafter to alter the number of wards of a borough, or the boundaries of any ward, or the apportionment of the members of the council among the wards. Formerly a similar power was conferred upon the L. C. C.

The now repealed provisions of the M. M. Acts prescribed the number of vestrymen to be elected for each parish on a basis of twelve for every thousand rated householders, with a minimum number of vestrymen of eighteen and a maximum of one hundred and twenty. This Act does not contain any similar provision, except that by sect. 2 (3), p. 10, *post*, the total number of aldermen and councillors is not to exceed seventy.

In assigning the number of vestrymen to each ward, under the old law, regard was to be had, so far as was considered practicable, as well to the number of rated householders as to the rateable value of each ward. It will be noticed that under this Act the population of the ward and not the number of rated householders is to be the element considered in connection with the rateable value.

The number of councillors assigned to each ward is to be divisible by three, inasmuch as, like their predecessors, one-third of the total number will retire annually, subject to any order of the L. G. B. that may be made under sub-sect. 8 of this section. (See p. 45, *post*.)

Rateable Value.—Defined, sect. 34, Lon. G. A. (See p. 205, *post*.)

Population.—For the purposes of the L. G. A., 1894, this was to be determined by the census of 1891: sect. 75 (2); and by sect. 39 provision was made in regard to subsequent increases and decreases of population “according to the last published census for the time being.” Under sect. 3 (1) of the London (Equalisation of Rates) Act, 1894, an intermediate census of the population was taken on the

night of 29th March, 1896, and the provisions of the Census (England and Wales) Act, 1890 (53 & 54 Vict. c. 61), were applied in the case of the census so taken, as if it were taken in pursuance of that Act. By sect. 4 of the former Act, the expression "population" means population according to the last published census for the time being, including the census taken in pursuance of that Act, or in any year in which a census is not taken, according to the population estimated by the Registrar-General under that Act. The method of estimating the population for that Act is prescribed by sect. 3 (2), see p. 199, *post*.

2—(3.) The number of aldermen shall be one-sixth of the number of councillors, and the total number of aldermen and councillors for each borough shall not exceed seventy.

Number of Aldermen to Councillors.—The proportionate number of aldermen to councillors is the same as that in the case of the L. C. C.: L. G. A., 1888, s. 40 (5). In other county councils and in boroughs regulated by the M. C. A., 1882, the proportion is one-third: see M. C. A., 1882, s. 14 (2). The number of aldermen can in no case exceed ten or the number of councillors exceed sixty.

2—(4.) Except as otherwise provided by or under this Act, the provisions of the Local Government Act, 1888, with respect to the chairman of the county council and the county aldermen respectively shall apply to the mayor and aldermen of a metropolitan borough respectively, and for this purpose references in that Act to the chairman of the county council and to county aldermen shall be construed as references to the mayor and aldermen of the borough.

Local Government Act, 1888.—The provisions of the L. G. A., 1888, as applied, are contained in the following sections:—

2—(1.) The council of a county and the members thereof shall be constituted and elected and conduct their proceedings in like manner, and be in the like position in all respects, as the council of a borough (a)

(a) "Borough" here means a borough subject to the M. C. A., 1882: see sect. 100, L. G. A., 1888. Sect. 75 of the Act of 1888, p. 11, *post*, incorporated certain sections of the M. C. A., 1882. These sections are set out pp. 12—19, *post*.

(*Local Government Act, 1888.*)

divided into wards, subject nevertheless to the provisions of this Act, and in particular to the following provisions, that is to say:—

(2.) As respects the aldermen . . .—

(a) clerks in holy orders and other ministers of religion shall not be disqualified for being elected and being aldermen (b) . . . ;

(b) a person shall be qualified to be an alderman . . . who, though not qualified in manner provided by the Municipal Corporations Act, 1882, as applied by this Act (c), is a peer owning property in the county, or is registered as a parliamentary voter in respect of the ownership of property of whatsoever tenure situate in the county (d) ;

(c) the aldermen shall be called county aldermen, . . . ; and a county alderman shall not, as such, vote in the election of a county alderman.

(5.) As respects the chairman of the county council—

(a) (Not applied: sect. 2 (1), *Lon. G. A.*)

(b) he shall, by virtue of his office, be a justice of the peace for the county (e) ; but before acting as such justice he shall, if he has not already done so, take the oaths required by law to be taken by a justice of the peace other than the oath respecting the qualification by estate (f).

40.—(5.) (Not applied: sect. 2 (3), *Lon. G. A.*)

75. For the purposes of this Act with respect to county councils, and to the chairmen . . . of such councils . . . the following portions of the Municipal Corporations Act, 1882, namely, Part II., Part III., Part IV. as amended by the Municipal Elections (Corrupt Practices) Act, 1884 . . . and Part I. of the Eighth Schedule shall, so far as the same are unrepealed and are consistent with the provisions of this Act, apply as if they were herein re-enacted with the enactments amending the same in such terms and with such modifications as are necessary to make them applicable to the said councils and their chairmen . . . and to the other provisions of this Act.

Provided as follows:—

(b) Removes the disqualification imposed by sects. 12 (1) (b) and 14 (3) of *M. C. A.*, 1882.

(c) For the qualifications so required, see sect. 14 (3), *M. C. A.*, p. 13, *post.*

(d) See note "Ownership of property," p. 12, *post.*

(e) See notes to sect. 24, p. 171, *post.*

(f) See 31 & 32 Vict. c. 72.

(*Local Government Act, 1888.*)

(10.) An outgoing alderman shall not, as alderman, vote on the election of a chairman (*g*).

(14.) . . . Twelve months shall be substituted for six months in sect. 39 of the Act as the period of absence which disqualifies an alderman . . .

(16.) Nothing in the Municipal Corporations Act, 1882, as applied by this section—

(b) Shall apply . . . any of the following provisions, namely, sub-sect. 5 of sect. 15 (*h*), sect. 16 (*i*), . . .

(c) Shall render any person elected to a corporate office (*k*), without his consent to his nomination being previously obtained, liable to pay a fine on non-acceptance of office, or render a chairman . . . disqualified as such by reason of absence (*l*).

Ownership of Property.—It is presumed that the qualification referred to in L. G. A., 1888, s. 2 (2) (b), must be in the borough for which the alderman is elected. Persons having the qualifications referred to may be parochial electors, and as such may be qualified to be aldermen without the assistance of this provision.

Municipal Corporations Act, 1882.—The provisions of the M. C. A., 1882, which are applied by the foregoing section, subject to the modifications named, are as follows:—

14.—(1.) The aldermen shall be fit (*m*) persons elected (*n*) by the council.

(*g*) This sub-section modifies sect. 61 (3), M. C. A., 1882, and meets the case where an outgoing alderman has been elected a councillor, and therefore votes as councillor. There is nothing to prevent an alderman being elected a councillor, but upon his making the declaration as councillor, he *ipso facto* ceases to be an alderman. (*Reg. v. Mayor, &c. of Bangor*, L. R. 18 Q. B. D. 349; 13 App. Cas. 349.)

(*h*) There is no provision in the Lon. G. A. that the mayor shall have precedence in the borough, and the provision of the M. C. A., 1882, on the subject is by this sub-section excluded from the L. G. A., 1888, and consequently excluded from this Act.

(*i*) There is no provision in the Lon. G. A. for the appointment of a deputy mayor such as is contained in sect. 16 of the M. C. A., 1882, which is here expressly excluded from the L. G. A., 1888, and therefore excluded from this Act. (See p. 24, *post*.)

(*k*) Defined in sect. 7, M. C. A., 1882; see note (*z*), p. 14.

(*l*) This sub-section modifies sects. 34 and 39, M. C. A., 1882, pp. 14 and 16, *post*.

(*m*) The following note is taken from Arnold's *Law of Municipal Corporations*, 4th ed., p. 29:—"The term of office of an alderman is twice that of a councillor.

(*Municipal Corporations Act, 1882.*)

(2.) (Not applied : sect. 2 (3), Lon. G. A.)

(3.) A person shall not be qualified to be elected or to be an alderman unless he is a councillor or qualified to be a councillor (*o*).

(4.) If a councillor is elected to, and accepts, the office of alderman he vacates (*p*) his office of councillor.

(5.) The term of office of an alderman shall be six years.

(6.) On the ordinary day of election (*q*) of aldermen in every third year one-half of the whole number of aldermen shall go out of office, and their places shall be filled by election.

(7.) The half to go out shall be those who have been aldermen for the longest time without re-election (*r*).

15.—(1.) The mayor shall be a fit person (*s*) elected by the council from among the aldermen or councillors or persons qualified to be such (*t*).

(2.) An outgoing alderman is eligible.

(3.) The term of office of the mayor shall be one year (*u*), but he shall continue in office until his successor has accepted office and made and subscribed the required declaration (*x*).

(4.) He may receive such remuneration as the council think reasonable (*y*).

(5.) (Not applied : sect. 75 (16) (b), L. G. A., 1888, p. 12.)

The aldermen are generally elected from among those councillors who have served for many years. . . . Occasionally a gentleman, not a member of the council, whose services are considered of special value in some department, has been offered the office. There is no doubt that the aldermen have played a most important part in sustaining the dignity and importance of town councils. As a rule, they are men of great experience in local affairs, and as they have a position independent of the passing passion of the hour, they are able to maintain and carry on local self-government until the popular mind has been enlightened, and a just appreciation of a measure has been established."

(*n*) As to election of aldermen, see sect. 60, M. C. A., p. 17, *post*. Aldermen cannot *as such* vote in the election of aldermen. (Sect. 2 (2) (c), L. G. A., 1888, p. 11, *ante*.)

(*o*) For qualifications as councillor, see p. 37, *post*. For disqualifications, see sub-sect. 5 of sect. 2 of Lon. G. A., p. 41, *post*. Also see note "Mayor and Aldermen," p. 20, *post*. .

(*p*) As to casual vacancies, see sects. 40 and 66, M. C. A., pp. 16 and 19, *post*.

(*q*) The 9th November, or if that day is Sunday, the following day (sect. 3 (3), Lon. G. A., p. 47). As to first elections, see sect. 3 (1), Lon. G. A., p. 46.

(*r*) That is, longest in office as aldermen without re-election and without reference to casual vacancies under sect. 40, M. C. A., p. 16, *post*.

(*s*) See notes, p. 20, *post*.

(*t*) See note (*o*), *supra*.

(*u*) Until the next ordinary day of election, 9th or 10th November. (Sect. 3 (2), Lon. G. A., p. 47, *post*.)

(*x*) As to declaration, see p. 15, *post*.

(*y*) See note on "Mayor's Purse," p. 20, *post*.

(*Municipal Corporations Act*, 1882.)

34.—(1.) Every qualified person elected to a corporate office (z), unless exempt (a) under this section or otherwise by law, either shall accept the office by making and subscribing the declaration (b) required by this Act within *five days* (c) after notice (d) of election, or shall, in lieu thereof, be liable to pay to the council a fine of such amount not exceeding, in case of an alderman . . . fifty pounds, and in case of a mayor one hundred pounds, as the council by byelaw determine.

(2.) If there is no byelaw determining fines, the fine, in case of an alderman, shall be twenty-five pounds, and in case of a mayor fifty pounds.

(3.) The persons exempt under this section are—

- (a) Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body; and
- (b) Any person who, being above the age of sixty-five years, or having within five years before the day of his election either served the office or paid the fine for non-acceptance thereof, claims exemption within five days after notice (d) of his election.

(z) Defined, sect. 7 (1), M. C. A., to mean, *inter alia*, the office of mayor, alderman, or councillor. The words "*after his consent to his nomination has been obtained*" should be read into this section after the words "corporate office," seeing that by sect. 75 (16) (c), L. G. A., 1888, a person elected to a corporate office without his consent to his nomination being previously obtained is not liable to pay a fine on non-acceptance of office: see p. 12, *ante*.

(a) Other exemptions than those given in the section are:—Postmaster-General and officers of the Post Office (1 Vict. c. 33, s. 12); Commissioners and officers of Excise (7 & 8 Geo. IV. c. 53, s. 11); Commissioners and officers of Inland Revenue (16 & 17 Vict. c. 69, s. 17; 53 & 54 Vict. c. 21, s. 8); Commissioners and officers of Customs (39 & 40 Vict. c. 36, s. 9); registered dentists (41 & 42 Vict. c. 33, s. 30); registered medical practitioners (21 & 22 Vict. c. 90, s. 35); inspectors of factories (41 Vict. c. 16, s. 67); army reserve men (45 & 46 Vict. c. 48, s. 7); registrars of births, deaths and marriages (1 Vict. c. 22, s. 18); military, naval, and marine officers on full or half-pay, and officers and others employed and residing in any of her Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments (sect. 253, M. C. A.).

(b) See sect. 35, *infra*; and as to the conscientious objector, sect. 36 (3), *infra*. The declaration in the M. C. A. is printed at p. 15, *post*.

(c) As applied by L. G. A., 1888, s. 75 (14), ten days was substituted for five days; as amended by the County Councils (Elections) Act, 1891, s. 5, three months was substituted for ten days, and the declaration may be made either in the manner prescribed by the L. G. A., 1888, or before any justice of the peace or commissioner to administer oaths in the Supreme Court of Judicature.

By sub-sect. 7 of this section of the Lon. G. A., the mayor and an alderman of a metropolitan borough shall be required to accept office within the same period as is allowed in the case of a councillor. For a councillor it is one month. (See the Vestrymen and Auditors (London) Election Order, 1898, applied by sub-sect. 5 of this section, p. 21, *post*.)

(d) That is, regular notice, either by being actually present when the result is announced, or by being apprised of the fact by some official authority. Mere casual information is not sufficient. (*Reg. v. Freese*, 5 Q. B. 94; 12 L. J. Q. B. 335.)

(*Municipal Corporations Act, 1882.*)

(4.) A fine payable under this section shall be recoverable summarily.

35.—A person elected to a corporate office shall not, until he has made and subscribed before two members of the council, or the town clerk, a declaration as in the Eighth Schedule, act in the office except in administering that declaration (e).

36.—(1.) A person elected to a corporate office may at any time by writing signed by him and delivered to the town clerk, resign (f) the office, on payment of the fine (g) provided for non-acceptance thereof.

(2.) In any such case the council shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the council and countersigned by the town clerk, and fixed on the town hall (h), and the office shall thereupon become vacant.

(3.) No person enabled by law to make an affirmation instead of taking an oath shall be liable to any fine for non-acceptance of office by reason of his refusal on conscientious grounds to take any oath or make any declaration required by this Act or to take on himself the duties of the office.

(e) See sect. 240, p. 19, *post*, as to effect of forms given in this Schedule. The text of the declaration is given below. The declaration as to estate may have no application to the metropolis, as it arises from the fact that it is required in the case of a borough councillor by sect. 11 (1) of the M. C. A., 1882, and there is nothing requiring it from a metropolitan borough councillor. See note "Mayor and Alderman," p. 20, *post*.

FORM OF DECLARATION ON ACCEPTANCE OF CORPORATE OFFICE.

I, A. B., having been elected mayor [or alderman, councillor, elective auditor, or revising assessor] for the borough of _____, hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability [and in the case of the person being qualified by estate say, And I hereby declare that I am seised or possessed of real or personal estate, or both [as the case may be], to the value or amount of one thousand pounds, or five hundred pounds [as the case may require], over and above what will satisfy my just debts].

(f) Resignation when once completed (by delivery of the writing and payment of fine) cannot be withdrawn even with consent of council. (*Reg. v. Mayor of Wigan*, 54 L. J. Q. B. 308; L. R. 14 Q. B. D. 908.) A person becoming disqualified by bankruptcy or absence ceases to hold office, and therefore ceases also to have power to resign. (*Hardwick v. Brown*, L. R. 8 C. P. 406; 37 J. P. 407; *Fletcher v. Saunders*, 49 J. P. 424.)

(g) As to fines, see sect. 34, M. C. A., *supra*. There is no power to remit or return a fine. Apparently a person who surrenders one municipal office to fill another is not liable to pay a fine. (*Reg. v. Mayor of Bangor*, per Lindley, L. J., 18 Q. B. D. p. 366; 56 L. J. Q. B. 326.)

(h) Sect. 232, M. C. A., explains this to mean "in some conspicuous place on or near the outer door of the town hall, or, if there is no town hall, in some conspicuous place in the borough or ward to which the notice or document relates."

(*Municipal Corporations Act*, 1882.)

37. A person ceasing to hold a corporate office shall, unless disqualified (i) to hold the office, be re-eligible.

38. The mayor and aldermen shall, during their respective offices, continue to be members of the council, notwithstanding anything in this Act as to councillors going out of office at the end of three years (k).

39.—(1.) If the mayor or an alderman . . . —

(a) (Not applied : sect. 2 (5), *Lon. G. A.*, p. 21, *post.*)

(b) Is (except in case of illness) continuously absent from the borough, *being mayor, for more than two months (l)*, or being alderman . . . for more than *six (m) months* :

he shall thereupon immediately become disqualified and shall cease to hold the office.

(2.) In any such event the council shall forthwith declare the office to be vacant, and signify the same by notice signed by three members of the council, and countersigned by the town clerk, and fixed on the town hall, and the office shall thereupon become vacant.

(3.) (Not applied : sect. 2 (5), *Lon. G. A.*)

(4.) Where a person becomes so disqualified by absence (n), he shall be liable to the same fine as for non-acceptance of office, recoverable summarily (o), but the disqualification shall, as regards subsequent elections, cease on his return.

40.—(p) (1.) On a casual vacancy in a corporate office, an election shall be held by the same persons and in the same manner as an election to fill an ordinary vacancy ; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(i) For disqualifications, see p. 41, *post.*

(k) This provides for the mayor (having been elected from the councillors) retaining his office until the 9th November, although as councillor he would have retired on the 1st November, by sect. 3 (2), *Lon. G. A.*

(l) By *L. G. A.*, 1888, s. 75 (16) (c), nothing in this section is to render a chairman disqualified as such by reason of absence, and this will of course apply to the mayor of a metropolitan borough.

(m) By *L. G. A.*, 1888, s. 75 (14), *twelve months* is substituted for *six* as the period of absence which disqualifies aldermen.

(n) The mayor as such cannot be disqualified by absence ; as to aldermen, see note (m), *supra* ; as to councillors, see p. 43, *post.*

(o) See 11 & 12 Vict. c. 43, ss. 33 and 34 ; 42 & 43 Vict. c. 49, s. 20 (10).

(p) Sects. 40 and 41 are applied also to the office of vestryman by *L. G. A.*, 1894, sect. 48 (4), being modified and adapted by *V. A. E. O.*, 1898, Sched. 5 : see p. 23, *post* ; p. 218, *post.*

(*Municipal Corporations Act, 1882.*)

(3.) Non-acceptance of office by a person elected creates a casual vacancy.

41.—(1.) (*q*) If any person acts in a corporate office without having made the declaration by this Act required (*r*), or without being qualified (*s*) at the time of making the declaration, or after ceasing to be qualified, or after becoming disqualified, he shall for each offence be liable to a fine not exceeding fifty pounds, recoverable by action.

(2.) A person being in fact enrolled in the burgess roll (*t*) shall not be liable to a fine for acting in a corporate office on the ground only that he was not entitled to be enrolled therein.

42.—(1.) (*u*) The acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified (*x*).

(2.) An election of a person to a corporate office shall not be liable to be questioned by reason of a defect in the title, or want of title, of the person before whom the election was had, if that person was then in actual possession of, or acting in, the office giving the right to preside at the election.

60.—(1.) (*y*) The ordinary day of election of aldermen shall be the ninth of November, and the election shall be held at the quarterly meeting of the council.

(2.) The election shall be held immediately after the election of the mayor . . . (*z*)

(*q*) Although the whole of this sub-section has been printed, it would appear, having regard to the language of sect. 2 (5) of Lon. G. A., p. 21, *post*, as to disqualifications for the offices of mayor and aldermen, that the provisions of the section relating to disqualifications have no application to metropolitan boroughs.

(*r*) By sect. 35, M. C. A., 1882, p. 15, *ante*.

(*s*) As to qualifications of mayor and aldermen, see pp. 12—13, *ante*, and note, p. 20, *post*.

(*t*) See note "Mayor and Aldermen," p. 20, *post*.

(*u*) This sub-section is printed subject to the observations made on sect. 41 (1), p. 20, *post*.

(*x*) See also M. C. A., 1882, s. 102.

(*y*) The whole of this sub-section is printed for the sake of clearness, but the first sentence of it does not apply, there being an express provision in sect. 3 (3) of the Lon. G. A., 1899, p. 47, *post*, on the subject. The second part of the sub-section is not altogether applicable, as there is no provision in the Act for quarterly meetings of the council. It is sufficient that, by sect. 3 (3), p. 47, *post*, the election of mayor and aldermen must be on the 9th day of November.

(*z*) See note (*e*), p. 15, *ante*.

(*Municipal Corporations Act*, 1882.)

(3.) An outgoing alderman, although mayor elect, shall not vote (z).

(4.) Every person entitled to vote (a) may vote for any number of persons not exceeding the number of vacancies, by signing and personally (b) delivering at the meeting to the chairman a voting paper containing the surnames and other names and places of abode and descriptions of the persons for whom he votes (c).

(5.) The chairman, as soon as all the voting papers have been delivered to him, shall openly produce and read them, or cause them to be read, and then deliver them to the town clerk to be kept for twelve months.

(6.) In case of equality of votes the chairman, although as an outgoing alderman or otherwise not entitled to vote in the first instance (d), shall have the casting vote.

(7.) The persons, not exceeding the number of vacancies, who have the greatest number of votes, shall be declared by the chairman to be, and thereupon shall be, elected.

61.—(1.) (Not applied : sect. 3 (3), *Lon. G. A.*, p. 47, *post.*)

(2.) The election of mayor shall be the first business transacted at the quarterly meeting of the council on the day of election (e).

(3.) (Not applied : sect. 75 (10), *L. G. A.*, 1888, p. 12, *ante.*)

(4.) In case of equality of votes, the chairman, although not entitled to vote in the first instance, shall have the casting vote (f).

(z) See sect. 2 (2) (c), *L. G. A.*, 1888, p. 11, *supra*; and sub-sect. (6) of this section. An alderman who, on the appointed day for election of mayor and alderman, was elected mayor, and made the prescribed declaration, and then voted in the election of aldermen, was held not to have ceased to be an "outgoing alderman" within this sect. 60 (3), and his vote was declared invalid. (*Hounsell v. Suttill*, 19 Q. B. D. 498; 56 L. J. Q. B. 502.)

(a) That is, every member of the council (except the aldermen), and the mayor (if he is not an alderman).

(b) The papers must be handed to the chairman "personally." (*Reg. v. Mayor, &c. of Wilton*, 34 W. R. 273.)

(c) As to misnomers or inaccurate descriptions, see sect. 241, *M. C. A.*, 1882, and *Reg. v. Thwaites*, 1 E. & B. 704; *Reg. v. Plenty*, L. R. 4 Q. B. 346; *Reg. v. Bradley*, 3 E. & B. 634; 30 L. J. Q. B. 180; *Henry v. Armitage*, L. R. 12 Q. B. D. 257; as to "residence," see notes, p. 38; a person's place of business is not his place of abode if he does not live there (*Reg. v. Deighton*, 5 Q. B. 896).

(d) See sect. 2 (2) (c), *L. G. A.*, 1888, p. 11, *ante*; and sub-sect. 3 of this section.

(e) See note (y), p. 17, *supra*, as to quarterly meetings. If the election of aldermen precedes that of mayor, the election is void (*Reg. v. M'Gowan*, 11 A. & E. 869). These elections must come before all other business (*Rex v. Parkyns*, 3 B. & A. 658).

(f) See note (z), *supra*.

(*Municipal Corporations Act, 1882.*)

66.—(1.) On a casual vacancy (*g*) in a corporate office (*h*), the election shall be held within fourteen days after (*i*) notice in writing of the vacancy has been given to the mayor or town clerk by two burgesses.

(2.) Where the office vacant is that of mayor, the notice of the meeting for the election shall be signed by the town clerk.

(3.) In other cases (*j*) the day of election shall be fixed by the mayor.

239.—(1.) Where by or under this Act a declaration or oath is required to be made or taken by the holder of a corporate office or other person before the council or any members thereof, or any other persons, they shall have authority to receive and administer the same without any commission or authority other than this Act.

(2.) Nothing in this Act in any case shall require or authorise the taking or making of any oath or declaration that would not have been required or authorised under the Promissory Oaths Act, 1868, or otherwise by law, if this Act had not been passed, or interfere with the operation of the Promissory Oaths Act, 1868.

240. The forms in the Eighth Schedule (*k*), or forms to the like effect, varied as circumstances require, may be used and shall be sufficient in law.

Municipal Corporations Act, 1882, Part IV.—Part IV. of the Municipal Corporations Act, 1882, as amended by the M. E. (C. P.) A., 1884, must now be referred to. Part IV. deals with corrupt practices at municipal elections and election petitions. By sect. 7 (1) of the M. C. A., 1882, a municipal election means an election to a corporate office, and by the same section corporate office means, *inter alia*, the office of a mayor and alderman. By sect. 75 of the L. G. A., 1888, p. 11, *ante*, these provisions are applied to the election, *inter alia*, of a chairman

(*g*) See sect. 40, M. C. A., 1882, p. 16, *supra*.

(*h*) See sect. 7 (1), M. C. A.; and note (*z*), p. 14, *ante*.

(*i*) As to computation of time, see sect. 230, M. C. A., 1882, requiring the day of the happening to be excluded in the counting, which commences from next day; and the act or proceeding is to be taken or done at the latest on the last day of the limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, Monday or Tuesday in Easter week, or a day appointed for a public thanksgiving, &c., in which case it is to be done on the next day afterwards, not being a Sunday, &c.

(*j*) *I.e.*, aldermen.

(*k*) The form of declaration on acceptance of office in the schedule is printed p. 15, *ante*.

and aldermen of a county council, and consequently by this sub-section of the Lon. G. A. they apply to the election of the mayor and aldermen of a metropolitan borough. But although these provisions contain the law on the subject, and must, of course, be considered should necessity arise, they have not been deemed of sufficient practical importance to be inserted in this volume. The law as to corrupt practices at elections of borough councillors is noted in its proper place in the notes to sub-sect. 5 of this section: see pp. 22—23, *post*.

Mayor and Aldermen.—It would seem, as a result of the combined effect of the various applied provisions, that the mayor and alderman must be a councillor or qualified to be a councillor of the borough for which he is mayor or alderman, but the point is not clear. Sect. 41 (2), p. 17, *ante*, is printed, but its applicability to the metropolis may be doubted.

In the metropolis the register of parochial electors will apparently be "the burgess roll." Under the M. C. A., 1882, s. 10 (2), a person is not entitled to be a councillor unless he is enrolled and entitled to be enrolled as a burgess. Under sect. 14 (1) the alderman must be qualified to be a councillor; by sect. 15 the mayor must be so qualified. These provisions are applied to chairmen of county councils and county aldermen, and are applied by this sub-section to the mayor and aldermen of a metropolitan borough. It may therefore be held, that the latter must not only be on the register of parochial electors but entitled to be on the register. On the other hand, it may perhaps be held, as the effect of the various provisions applied, that the qualification to be an alderman of a metropolitan borough is that of being qualified to be a metropolitan borough councillor, and to be a borough councillor it is only necessary to be on the register of parochial electors or qualified by twelve months' residence. The question of qualification by estate is apparently subject to similar reasoning.

Mayor's Purse.—"The corporation were not entitled to make a colourable addition to the salary of the mayor merely that the addition might be applied in indirectly making payments which would not be justified if made directly. . . . It was clear that the corporation were entitled to make a reasonable addition to the mayor's salary if it was anticipated that in his year of office, by reason of the occurrence of some event of national importance, his expenditure as mayor in festivities and so forth might be increased. Any such resolution, *bond fide* passed, increasing salary in such a case could not be impeached": *per* Romer, J., *Attorney-General v. Mayor of Cardiff and others*, 10 T. L. R. 420; also see *Attorney-General v. Corporation of Blackburn*, 57 L. T. 385.

§ 2 (4—5)] CONSTITUTION, &c. OF BOROUGH COUNCIL. 21

A note may here be made of the statement contained in the Report of the Corporation of the City of London on the conclusions of the Royal Commission on Amalgamation (page 16 of Report):—"That in case obligations and responsibilities outside the City, but now vested in or undertaken by the Corporation, be taken over either by the central body or by municipalities to be created, an allocation should be made out of the City's revenues in the form of an annual payment to each of such newly-created municipalities, for the purposes of such expenditure as would not be properly payable out of the borough rate."

2—(5.) Except as otherwise provided by or under this Act, the law relating to the constitution, election and proceedings of administrative vestries, and to the electors and members thereof, shall apply in the case of the borough councils under this Act and the electors and councillors thereof, and section forty-six of the Local Government Act, 1894 (*l*), relating to disqualifications shall apply to the offices of mayor and alderman.

Constitution of the Borough Council.—For the constitution of the borough council, see sect. 2 (1), Lon. G. A., p. 8, *ante*. Cf. M. C. A., 1882, s. 10; and see the notes on sect. 1 of this Act, p. 5, *ante*, as to how the constitution of a metropolitan borough council differs from that of a borough regulated by the M. C. A., 1882.

Very little remains of the constitution of the administrative vestries as created by the M. M. Acts. Considerable changes were made by the L. G. A., 1894. The qualifications of vestrymen were altered, the electorate was widened, a printed register of electors, called the Register of Parochial Electors, was introduced, and the mode of conducting the elections was completely transformed. The incumbent, formerly the customary chairman, ceased to enjoy this office, although the incumbent, the churchwardens, and in some parishes the district rectors were retained as *ex officio* members; but this feature is abolished in the new councils by sect. 23 (1), p. 165, *post*. The other changes made by this Act are either here or elsewhere duly noted.

The term of office of vestrymen was three years (M. M. A., 1855, s. 9), and this period will apply to borough councillors. One-third of the vestry retired annually (*ibid.*), and this will hold good with

regard to the councillors in the absence of an order under sub-sect. 8 of this section. The elections of vestries were held in the month of May in each year on such day as the vestry chose to appoint (M. M. A., 1855, s. 7); but the ordinary elections of councillors will take place on the 1st or 2nd November: Lon. G. A., s. 3; as to first elections, see sects. 3 (1) and 27. Sect. 10 of the M. M. A. provided that vacancies occasioned by effluxion of time, death or otherwise, were to be filled up at the next ensuing annual elections; but the L. G. A., 1894, made provision, which continues, for the filling up of casual vacancies by bye-elections: sect. 48 (4), p. 23, *post*.

Election of Borough Councillors.—The law relating to the election of administrative vestries is to apply to the election of borough councillors, and is contained in the L. G. A., 1894, and the Rules made by the L. G. B. thereunder. The Rules are contained in the V. A. E. O., 1898, and, in accordance with the Act, these Rules provide—

“48.—(2.)—(i.) for every candidate being nominated in writing by two parochial electors as proposer and seconder and no more;

(ii.) for preventing an elector at an election for a union, or for a district not a borough, from subscribing a nomination paper or voting in more than one parish or other area in the union or district;

(v.) for the polls at elections held at the same date and in the same area being taken together, except when this is impracticable;

(vi.) for the appointment of returning officers for the elections.”

Sect. 48 of the L. G. A., 1894, further enacts:—

“(3.) At every election regulated by rules framed under this Act, the poll shall be taken by ballot, and the Ballot Act, 1872, and the Municipal Elections (Corrupt and Illegal Practices) Act, 1884, and sections seventy-four and seventy-five and Part. IV. of the Municipal Corporations Act, 1882, as amended by the last-mentioned Act (including the penal provisions of those Acts) shall, subject to adaptations, alterations, and exceptions made by such rules, apply in like manner as in the case of a municipal election. Provided that—

(a) section six of the Ballot Act, 1872, shall apply in the case of such elections, and the returning officer may, in addition to using the schools and public rooms therein referred to free of charge, for taking the poll, use the same, free of charge, for hearing objections to nomination papers and for counting votes; and

(b) section thirty-seven of the Municipal Elections (Corrupt and

(*Local Government Act, 1894.*)

Illegal Practices) Act, 1884, shall apply as if the election were an election mentioned in the First Schedule to that Act (*l*).

(4.) The provisions of the Municipal Corporations Act, 1882, and the enactments amending the same, with respect to the expenses of elections of councillors of a borough, and to the acceptance of office, resignation, re-eligibility of holders of office, and the filling of casual vacancies, and section fifty-six of that Act shall, subject to the adaptations, alterations, and exceptions made by the said rules, apply in the case of . . . members of the local board of Woolwich, and of a vestry under the Metropolis Management Acts, 1855 to 1890, and any Act amending the same. Provided that—

- (b) nothing in the enactments applied by this section shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.”

The provisions of the Ballot Act, 1872, adapted by the rules are those contained in sects. 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 24, 28, and the first and second schedules. The Order likewise adapts sects. 34, 35, 36, 37, 40, 41, 66, 74, 75 and 239 of the M. C. A., 1882, and the M. E. (C. P.) A., 1884.

General Election Order.—In the absence of any further Order that may be made by the L. G. B. the Vestrymen and Auditors (London) Election Order, 1898, will, except as is otherwise provided by or under this Act, apply to the elections of the new borough councils. A perusal of the Order will show that it will be extremely difficult, if not actually impossible, to apply it, as it is at present framed, to the elections of borough councils, and it would seem obviously desirable that the L. G. B. should repeal this Order and frame an entirely new one in order to adjust their rules to the altered circumstances occasioned by this legislation. As an example of one of the many difficulties which would arise if the Order is left as it stands, see the notes, pp. 36—7, *post*.

The Fifth Schedule of the Order at present in force is printed in an appendix, p. 217, *post*.

Proceedings of the Borough Council.—The law relating to the proceedings of administrative vestries will be found in the M. M. A., 1855, and amending Acts, and will, subject to the provisions of the Lon.

(*l*) See note as to election expenses, p. 41, *post*.

G. A. apply to the metropolitan borough councils: see sects. 8, 9 and 27 (1) (c), *post*, for the changes made by this Act.

The corresponding provisions in the M. C. A., 1882, are those contained in sect. 22, and in the rules in the Second Schedule to that Act. In many respects the proceedings of a metropolitan borough council will differ from those of a provincial borough council.

By sect. 202 of the M. M. A., 1855, vestries are empowered to make byelaws regulating their proceedings, and it will be easily understood that these byelaws nearly all vary *inter se*.

There is no such provision in the Lon. G. A. as is contained in sects. 16 and 237 of the M. C. A., 1882, for the appointment of a deputy mayor. But under rule 11, Part II., First Schedule of the L. G. A., 1894, "the parish council may, if they think fit, appoint one of their number to be vice-chairman, and the vice-chairman shall, in the absence or during the inability of the chairman, have the powers and authority of the chairman." The L. G. B. have, upon application made under sect. 33 of the Act, conferred on the vestry of a parish in London the power of a parish council to appoint a vice-chairman. (See 27th Annual Report of the L. G. B., 1897—8 [C. 8978], p. xl., and the Annual Report of the Paddington Vestry for 1897—8, p. 36.) By sect. 15 (1) (c) of the Lon. G. A., a scheme may make provision for anything which may be done with respect to a parish under sect. 33 of the L. G. A., 1894 (*l*).

By sect. 37, Metropolis Management Amendment Act, 1862, every vestry may hold their meetings on such days of the week as they may from time to time determine; and by sect. 31 (3), L. G. A., 1894, "nothing in any local or personal Act shall prevent any (council) . . . from holding their meetings at such time as may be directed. Meetings may be convened by transmitting through the post or otherwise notice, signed by the clerk, to each vestryman, at his usual or last known place of abode, of the place and hour of holding the same, and the special purposes thereof, three days before the day of meeting, and also by affixing at the same time notice thereof on or near the door of the town hall or other the place of meeting. (Metropolis Management Amendment Act, 1856, s. 9.)

No resolution or other act of any vestry shall be revoked or altered at any subsequent meeting, unless such subsequent meeting be specially convened for the purpose, nor unless such revocation or alteration be determined upon by a majority consisting of two-thirds of the vestry-

(*l*) But *quære* if this power could now be conferred, there being no "chairman."

men present at such subsequent meeting, if the number of vestrymen present at such subsequent meeting be not greater by one-fifth than the number present when such resolution was made or act was done; but if the number of vestrymen present at such subsequent meeting be greater by one-fifth than the number present at such former meeting, then such revocation or alteration may be determined upon by a mere majority: sect. 57, M. M. A., 1855. (See *Vestry of St. George the Martyr v. Pethebridge*, 31 J. P. 279; *Sooby v. Kensington Vestry*, 35 J. P. 343; *Reg. v. Jones*, 42 J. P. 614; *Mayer v. Burslem*, 39 J. P. 437.)

By sect. 28 of the M. M. A., 1855, all questions shall be decided by the votes of the majority of the vestrymen present. In other Acts the expression is found "present and voting": M. C. A., Second Schedule, rule 10, applied to county councils by 1888 Act; also schedule substituted by L. C. C. (Gen. Powers) Act, 1893, rule 8; L. G. A. 1894, Sched. I., Part II., rule 9; P. H. A., 1875, Sched. I., rule 7, applied by sect. 59 (1) of 1894 Act to urban and rural district councils and boards of guardians; and Art. 4 of Sanitary Officers (London) Order, 1891, issued by L. G. B. under sect. 108, P. H. A., 1891. The decision may be determined by a show of hands or by a subsequent division or poll. (*Tear v. Freebody*, 4 C. B. (N. S.) 228. See sect. 2 (8), Lon. G. A., p. 45, *post.*)

As to committees, see sects. 8 and 9, Lon. G. A., pp. 85—91, *post.*

Sects. 60 and 61, M. M. A., provide for entries of all proceedings, with the names of vestrymen who attend, being minuted, and proper account books being kept, all such books being open to inspection.

All these enactments as to the proceedings of vestries will apply to metropolitan borough councils.

The Electors.—By the L. G. A., 1894, the persons qualified to vote in the election of administrative vestries (*m*) were those whose names were on the register of parochial electors. This register will be "the register for the purpose of borough elections" (sect. 4, Lon. G. A.); and it will be generally conclusive as to the right to vote: sect. 44 (1), L. G. A., 1894. The electors of the new borough councils will therefore be the "parochial electors" of the Act of 1894, who, by sect. 2 (1), are defined as "the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish," "and no others." By sect. 44 (1), L. G. A., 1894, "the local government register of

(*m*) And elective vestries: see notes to sect. 1, p. 3, *ante*; sect. 34, p. 205, *post.*

electors and the parliamentary register of electors, so far as they relate to a parish, shall, together, form the register of the parochial electors of the parish"; and by sub-sect. (2), "where the parish is in a parliamentary borough, such portion of the parliamentary register of electors for the county as contains the names of persons registered in respect of the ownership of any property in the parish shall be deemed to form part of the parliamentary register of electors for the parish within the meaning of this section." The additional voters thus introduced are supplemented by certain others, who are enrolled upon the separate list directed to be made by the Act: sect. 44 (6) and (8), and sect. 43.

Accordingly, the register of parochial electors in a metropolitan parish is composed of the respective portions of Division I., Division II., the Lodgers List, Division III., the Separate List, and County Ownership Electors Portion, as relates to such parish.

The qualifications required for registration on these various lists may best be shown *seriatim* :—

DIVISION I.

(Contains the names of men voters who are entitled to vote at parliamentary, county council, borough council, and guardians' elections.)

General Qualifications.

A person entitled to be registered must be a man of full age, and not subject to any legal incapacity, and must in all other respects be duly qualified to be registered as a parliamentary elector, and must not at any time during the twelve months immediately preceding the 15th day of July of the year of registration have received any parochial relief or other alms⁽ⁿ⁾; but where a person has received for himself or for any member of his family any medical or surgical assistance, or any medicine, at the expense of any poor rate, he is not thereby deprived of his right to be registered, and medical or surgical assistance includes all medical and surgical attendance, and all matters and things supplied by or on the recommendation of the poor law medical officer at the expense of any poor rate^(o).

By the Electoral Disabilities Removal Act, 1891, a person shall not be disqualified from being registered as a parliamentary elector for a county or borough by reason only that during part of the qualifying

(n) R. P. A., 1832, s. 36; R. P. A., 1867, s. 40.

(o) 48 & 49 Vict. c. 46, ss. 2 (1) and 4.

period not exceeding four months at any one time, he has, in the performance of any duty arising from or incidental to any office, service, or employment held or undertaken by him, been absent from his dwelling-house or lodgings, or not resided in or within the required distance from such county or borough: 54 & 55 Vict. c. 11, s. 2.

A.—The Ten Pounds Occupation Qualification.

(2 & 3 Will. IV. c. 45, s. 27; 48 & 49 Vict. c. 3, s. 5; 48 & 49 Vict. c. 15; cited in C. E. A., 1888, Schedule.)

(i.) A person entitled to be registered as a parliamentary elector in respect of a ten pounds occupation qualification—

(a) Must during the whole twelve months immediately preceding the 15th day of July (*p*) have been an occupier as owner or tenant of some land or tenement in the parish of the clear yearly value of not less than ten pounds; and

(b) Must have resided in or within seven (*q*) miles of the said parliamentary borough during six months immediately preceding the 15th day of July; and

(c) Such person or someone else must, during the said twelve months, have been rated to all poor rates made in respect of such land or tenement; and

(d) All sums due in respect of the said land or tenement on account of any poor rate made and allowed during the twelve months immediately preceding the 5th day of January next before the registration (*r*), or on account of any assessed taxes due before the said 5th day of January, must have been paid on or before the 20th day of July.

(ii.) If two or more persons jointly are such occupiers as above mentioned, and the value of the land or tenement is such as to give ten pounds or more for each occupier, each of such occupiers is entitled to be registered as a parliamentary elector (*s*).

(iii.) If a person has occupied in the said parliamentary borough different lands or tenements of the requisite value in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be registered as an elector in the parish in which the last occupied land or tenement is situate (*t*).

The only assessed tax now remaining is the inhabited house duty,

(*p*) 41 & 42 Vict. c. 26, s. 7.

(*q*) For a parish in the City of London it is twenty-five miles: 30 & 31 Vict. c. 102, s. 46.

(*r*) 11 & 12 Vict. c. 90.

(*t*) 48 & 49 Vict. c. 23, s. 10.

which replaced the window tax, and is chargeable under 14 & 15 Vict. c. 36. It is now payable on 1st January annually: 43 & 44 Vict. c. 19, s. 82 (1). There is nothing in any Act enabling overseers to be informed of the non-payment of this tax, and this provision is in practice a dead letter. The Income Tax Act, 1842 (5 & 6 Vict. c. 35), which re-imposed the income-tax, Schedule A. (property tax), provides by sect. 184 that non-payment of that tax shall not be a disqualification to a voter.

Note that only *six* months' residence is required: cf. the twelve months' inhabitant occupancy under the household qualification, *infra*.

B.—The Household Qualification.

(30 & 31 Vict. c. 102, s. 3.)

(i.) A person entitled to be registered as a parliamentary elector in respect of a household qualification—

(a) Must on the 15th day of July (*u*) in any year be and for the whole of the twelve months immediately preceding that day (except the time (if any) not exceeding four months in the whole during which he has permitted the house to be occupied as a furnished house by some other person (*x*)), have been an inhabitant occupier of some dwelling-house in the parish or of some part of a house separately occupied as a dwelling (*y*); and

(b) Such person or someone else (*z*) must during those twelve months have been rated to all poor rates made in respect of the said dwelling-house; and

(c) All sums due in respect of the said dwelling-house on account of any poor rate made and allowed during the twelve months immediately preceding the 5th day of January must have been paid on or before the 20th day of July.

(ii.) If two or more persons are joint occupiers of a dwelling-house, no one of them is entitled to be registered as a parliamentary elector in respect of a household qualification in respect thereof, though, if the value is sufficient, one or more of them may be so entitled under the 10% occupation qualification (*a*).

(iii.) If a person has occupied different dwelling-houses in the said parliamentary borough in immediate succession during the said twelve months, he is entitled in respect of the occupation thereof to be

(*u*) 41 & 42 Vict. c. 26, s. 7.

(*x*) 41 & 42 Vict. c. 3, s. 2.

(*y*) 41 & 42 Vict. c. 26, s. 5.

(*z*) 32 & 33 Vict. c. 41, s. 19; 41 & 42 Vict. c. 26, s. 14.

(*a*) Reg. Order, 1895, Sched. 3, Part I., para. 6 (ii).

registered as a parliamentary elector in the parish in which the last occupied dwelling-house is situate.

In the case of a borough divided into electoral divisions, occupation in any division has the same effect as if all the premises occupied were in the same division as the premises occupied at the end of the qualifying year: 48 & 49 Vict. c. 23, s. 10.

It will be noticed that with regard to this franchise there is no qualification as to annual value; but the occupation required is practically equivalent to residence, and must be exclusive. Continuous residence is not necessary, but—except as to the four months provided for in the case of sub-letting—there must be (a) the legal right to reside at any time during the qualifying period; (b) the possession of a sleeping apartment; (c) if absent, the right to return; or, at any rate, no manifestation of a contrary intention. A dwelling-house may be part of a house, such as a flat, or a set of rooms. The effect of the various Rating Acts is that a “householder” who occupies a portion of a dwelling-house, which portion is rateable, whether he is rated or not, and whether he pays rates or not (assuming that they are paid by somebody), is entitled to be registered: *Bradley v. Baylis*, 8 Q. B. D. at p. 217.

There is no reference to the payment of assessed taxes in respect of the household qualification.

No joint occupier is entitled to be registered in respect of the household qualification: 30 & 31 Vict. c. 102, s. 3; 48 Vict. c. 3, s. 2. But this does not apply to the case of a householder who lets out part of his house to a lodger, if such lodger is in no way jointly liable for rent or rates: *Brewer v. McGowen*, L. R. 5 C. P. 239; 39 L. J. C. P. 30.

DIVISION II.

(Contains the names of men voters who are entitled to vote at parliamentary, borough council (b), and guardians' elections, but not at county council elections.)

C.—The Service Franchise.

(48 & 49 Vict. c. 3, s. 3.)

By the R. P. A., 1884, s. 3, where a man himself inhabits a dwelling-house by virtue of any office, service, or employment, and

(b) Only in London, not in provincial boroughs. (*McLean v. Pritchard*, 20 Q. B. D. 285.)

the dwelling-house is not inhabited by any person under whom such man serves in such office, service, or employment, he is considered to be an inhabitant occupier of that dwelling-house as a tenant.

This franchise is accordingly an extension of the household qualification to such persons, and the qualifications in other respects are the same as under "B."

Service voters are entitled to claim for successive occupation either to ordinary occupation or to premises occupied by reason of their service; *i.e.*, all or any of the occupations may be by virtue of service; "the fact of successive occupancy of two dwelling-houses being established, the different character of the occupancy is immaterial for the purpose of the parliamentary franchise": *Nicholson v. Yeoman* (1889), 24 Q. B. D. 145. See also *Torish v. Clark (Monaghan's Case)* (1885), 18 L. R. Ir. 285.

The Electoral Disabilities Removal Act, 1891, applies, p. 26, *ante*.

D.—The Lodger Franchise.

(30 & 31 Vict. c. 102, s. 4.)

Although the Lodger List is not printed as part of Division II., but separately, the voting power of the franchise is the same as the Service, and properly falls in here:—

(i.) A person entitled to be registered as a parliamentary elector in respect of a lodger qualification—

- (a) Must claim to be registered; and
- (b) Must have occupied separately as a lodger for the whole twelve months immediately preceding the 15th day of July ^(e) his lodgings, being part of one and the same dwelling-house in the parish, and being of a clear yearly value, if let unfurnished, of ten pounds or upwards; and
- (c) Must have resided in such lodgings during the said twelve months.

(ii.) If two or more persons are joint lodgers, and the value of the lodgings is such as to give ten pounds or more for each lodger, two of such persons, but no more, are entitled to be registered as parliamentary electors.

(iii.) If a person has occupied different lodgings of the requisite value in the same house, in immediate succession, he is entitled to be

(e) 41 & 42 Vict. c. 28, s. 7.

registered as a parliamentary elector in respect of the occupation thereof.

The lodger franchise has, since 1884, been uniform in counties and boroughs. Note that a new element is introduced: the lodger must make a claim to be registered as a lodger, being part of the qualification: *Hersant v. Halse* (1886), 18 Q. B. D. 412. It is not possible to discuss what is a lodger here; but the leading case of *Bradley v. Baylis* (d) may be referred to. A son may be a lodger in his parents' house: *Brown v. Martins*, 13 Sc. Sess. Ca. 4th Series, 159. Successive occupation can only occur in the same house (that is, a change of rooms does not disqualify if there be no break in the succession); but in any such case there must be a claim as a new lodger.

The Electoral Disabilities Removal Act, 1891, applies, p. 26, *ante*.

DIVISION III.

(Contains the names of men and women voters who are entitled to vote at county council, borough council, and guardians' elections, but not at parliamentary elections.)

The L. G. A., 1888, s. 2 (4), provides that the electors of county councillors shall be (a) in the provincial boroughs, the burgesses enrolled under the M. C. A., 1882, and the Acts amending the same (*i.e.*, the County Electors Act, 1888), namely (i) the burgesses, and (ii) 10% occupation electors under the C. E. A., 1888; and (b) elsewhere (that is, in administrative counties) the persons registered as county electors under the C. E. A., 1888, namely (i) persons possessing a burgess qualification as defined by the M. C. A., 1882, s. 9, and (ii) 10% occupation electors as defined by the schedule to that Act. The effect of sect. 2 (4), L. G. A., 1888, and sect. 2, C. E. A., 1888, read together, is that the qualifications of the county electors in boroughs and counties are practically identical, being governed by sect. 9, M. C. A., 1882.

General Qualifications.

The general qualifications are the same as those shown at p. 26, *ante*, and need not be repeated here; but there must be added the following:—Unmarried women (spinsters, widows and *divorcées*) are entitled to be enrolled as burgesses: M. C. A., 1882, s. 63; *R. v. Harrald* (1872), 7 Q. B. 361; 41 L. J. Q. B. 173. They are accord-

(d) (1881) 8 Q. B. D. 210, noted p. 29, *ante*.

ingly entitled to be registered and to vote in respect of this division (C. E. A., 1882, s. 2 (2)); but a married woman is not so entitled unless her marriage has been dissolved by the decree of a competent court. Peers otherwise qualified are also entitled to be registered on Division III. Moreover, there is this peculiarity in connection with the occupation requisite for the franchise under the M. C. A., that a person who succeeds to qualifying property by descent, marriage, marriage settlement, devise or promotion to a benefice or office, is entitled to regard the occupancy and rating by his predecessor in title as occupancy and rating by himself, and is not required to prove his own residence, occupation, or rating before the succession. This is known as "constructive occupation": sect. 33 (1), M. C. A., 1882; sect. 2 (2), C. E. A., 1888. As to constructive rating, see *ibid.* The Electoral Disabilities Removal Act, 1891, as to four months' absence in performance of duty, applies also in respect of the local government register of electors: 54 & 55 Vict. c. 11, s. 2 (b).

E.—Old Burgess Qualification.

(45 & 46 Vict. c. 50, s. 9.)

(i.) A person entitled to be enrolled as a burgess [*or* registered as a county elector] in respect of the old burgess qualification—

- (a) Must on the 15th day of July in any year be, and during the whole of the twelve months immediately preceding that day have been, an occupier of a house, warehouse, counting-house, shop, or other building in the parish; and
- (b) Have resided during those twelve months in the administrative county of London or within fifteen miles thereof; and
- (c) Rating: similar to A. (i) (c), and B. (i) (b); and
- (d) Payment of rates: similar to B. (i) (c).

(ii.) A person is entitled to be enrolled as a burgess [*or* registered as a county elector] under the old burgess qualification, notwithstanding that he has permitted his dwelling-house to be occupied as a furnished house by some other person for a time not exceeding four months, and during that time has not resided as above mentioned.

(iii.) If two or more persons are joint occupiers, each such occupier is entitled to be enrolled as a burgess [*or* registered as a county elector].

Note that annual value is immaterial; all joint occupiers, if otherwise qualified, are entitled to be registered. "Other building" means, in effect, any structure possessing some degree of permanence and

value (*d*), and has been held to include, amongst other things, a shed (*e*), a lime kiln (*f*), and a cowshed (*g*).

Note that the voter must have occupied *on* the 15th July: cf. "A." and "B."

F.—The £10 Occupation Burgess Qualification.

(51 & 52 Vict. c. 10, s. 3 and Schedule.)

(i.) A person entitled to be enrolled as a burgess [*or* registered as a county elector] in respect of the ten pounds occupation burgess qualification—

(a) Must during the whole twelve months immediately preceding the 15th day of July have been an occupier as owner or tenant of some land or tenement in the parish of the clear yearly value of not less than ten pounds; and

(b) Must have resided in or within fifteen miles of the administrative county of London during six months immediately preceding the 15th day of July; and

(c) Rating: same as A. (i.) (c): see p. 27, *ante*.

(d) Payment of rates: same as A. (i.) (d).

(ii.) Joint occupation: same as A. (ii.).

(iii.) If a person has occupied in immediate succession during the twelve months immediately preceding the 15th day of July different premises in the administrative county which would qualify him for enrolment as a burgess [*or* registered as a county elector] he is entitled, in respect of the occupation thereof, to be enrolled as a burgess [*or* registered as a county elector] in the parish in which the last occupied premises are situate.

G.—The Separate List.

The Separate List forms part of the register of parochial electors of the parish, and is printed at the end of the other lists of electors for the parish, and the names are numbered consecutively with the other names on those lists, and the list is for the purposes of the L. G. A., 1894, deemed to be part of the register of parochial electors. The Separate List contains the names—

(a) of women, who, but for sex, would be entitled to be registered as parliamentary electors, and who, but for marriage, would be

(*d*) *Powell v. Boraston*, 18 C. B. (N. S.) 175.

(*e*) *Watson v. Cotton*, 5 C. B. 51.

(*f*) *Lyme Regis Case*, B. & Aust. 486 (*Genges' Case*).

(*g*) *Whitmore v. Bedford*, 5 M. & G. 9.

entitled to be registered as burgesses or county council electors. (Sect. 43, L. G. A., 1894.) But a husband and wife cannot be qualified in respect of the same property. (*Ibid.*)

- (b) of those persons whose names appeared twice or more in the lists submitted by the overseers to the revising barrister, and transferred by him to the Separate List in accordance with the directions of sect. 44 (6), L. G. A., 1894. Where previously the revising barrister would have put an asterisk against a name, or erased it, or put a note against it, by this sub-section such name is to be printed either in Division III. or the Separate List, as the case requires. The object of the section is to insure that a person shall have a right to vote once, and once only, in every parish in which he possesses the necessary qualification. See L. G. A., 1894, s. 44 (4), (5), and (7).
- (c) of those persons who would be parochial electors if a parish in the county of London were a rural parish. (Sect. 75 (2), L. G. A., 1894.) This refers to the difference created by the condition as to residence within the seven-mile limit being confined to the 10% occupation franchise in boroughs, and not extending to the 10% occupation franchise in counties. It appears to follow that a person, occupying a 10% occupation qualification property in a borough, who would, but for residence outside the seven-mile or fifteen-mile radius, be otherwise entitled to be registered as a parliamentary or county council elector respectively, is entitled to be a parochial elector: that is to say, he would be entitled to be registered as a parliamentary elector and consequently be a parochial elector if the parish were a rural parish.

A peer of the realm is not entitled to be registered as a parochial elector in respect of the ownership of property, being excluded from the parliamentary register; nor, as sect. 43, L. G. A., 1894, only removes the disqualification of *coverture* and not of *sex*, is a woman qualified by reason merely of her ownership of land, for she is not thereby entitled to be registered as a parliamentary voter. (*Drax v. Ffooks*, (1896) 1 Q. B. 1, 238, C. A.; 65 L. J. Q. B. 70; 60 J. P. 214.) Nor are women lodgers, or women service franchise voters introduced, because these qualifications belong to the parliamentary register only.

H.—Ownership Electors.

Sect. 44 (2), L. G. A., 1894, which, for a parish in a parliamentary borough, makes the ownership portion in respect of such parish of the

parliamentary register of electors for the county part of the register of parochial electors, has already been referred to. The words used are "shall be deemed to form part," and such portion therefore is not printed as part of the Separate List, but the ownership list (part of the county register) and the other lists (which form the parliamentary and local government borough register) are, with the Separate List, taken together to form the parochial register. All lists and registers are framed in parts in such manner as to enable the returning officer to make up a complete register for every polling district or ward: sect. 44 (3), L. G. A., 1894; 41 & 42 Vict. c. 26, s. 15 (8).

The persons entitled to the franchise as it now exists in respect of ownership may thus be shortly described:—

- (i) Persons seised of an estate of inheritance (in fee simple or fee tail) of freehold tenure to the value of 40s. by the year at least above all charge: 8 Hen. VI. c. 7.
- (ii) Persons seised of an estate for life or lives of freehold tenure of the value of 40s., but under the value of 5l., who—
 - (a) actually and *bond fide* occupy the premises;
 - (b) were seised of such estate on the passing of the R. P. A., 1832;
 - (c) have acquired such estate since by marriage, marriage settlement, descent, devise, or accession to a benefice or office.
- (iii) Persons possessed in freehold, copyhold, or any other tenure, for life or lives, or any larger estate, of lands or tenements of the clear yearly value of not less than 5l.
- (iv) Persons possessing certain chattel interests, viz., leaseholds originally created for a term of not less than sixty years, if of the value of 5l. per annum, and leaseholds originally created for twenty years if of 50l. per annum value.

By sect. 24 of the R. P. A., 1832, and sect. 59, R. P. A., 1867, no person is entitled to vote for a county in respect of any freehold house, land, &c., as would confer a vote for the borough, whether he has or has not actually acquired the right (*i.e.*, by being registered) for such borough in respect thereof. A freeholder therefore can only be registered to vote for a county in respect of property situate within a borough and being of sufficient value to confer a vote for the borough, when he is disqualified from voting for the borough by reason of his not occupying such property. But where the property (not being his dwelling-house) is of less value than the 10l. a year required by the 10l. occupation qualification, but is worth 40s. a year,

the county vote is conferred upon the owner in respect thereof, although such owner occupies : see *Chilcott v. Bullen* (1881), Colt. 282 ; 46 L. T. N. S. 63 ; *Burton v. Overseers of Aston* (1849), 8 C. B. 7 ; 19 L. J. C. P. 28 ; *Sanders v. Smith* (1880), Colt. 150 ; 50 L. J. C. P. 117. Where a man has estate enough, he may be entitled to both franchises for property lying within the borough : *Capell v. Overseers of Aston* (1849), 8 C. B. 1 ; 19 L. J. C. P. 28 ; *Beswick v. Alker* (1872), L. R. 8 C. P. 265 ; 42 L. J. C. P. 26.

With respect to copyhold and leasehold premises situate within a borough, the R. P. A., 1832, s. 25, and the R. P. A., 1867, s. 59, provide that no person shall be entitled to vote for them for the county if the premises would entitle him or any other person (i.e., his tenant) to the borough franchise ; and this whether he or such other person shall or shall not have actually acquired the right to vote for such borough in respect thereof : see *Chorlton v. Johnson (Bunting's Case)* (1868), L. R. 4 C. P. 426 ; 38 L. J. C. P. 37 ; *Proctor v. Annison* (1859), 7 C. B. N. S. 48 ; 29 L. J. C. P. 90 ; *Sanders v. Searson*, Colt. 135 ; 50 L. J. C. P. 117. It will be noticed that the words "any other person" constitute the distinction between sects. 24 and 25 of the 2 & 3 Will. IV. c. 45, in regard to freeholders, and copyholders and leaseholders under similar circumstances. The freeholder, if not occupying, would have a county vote for the house, if of the requisite value ; the copyholder or leaseholder would not : *per Tindal, C. J.*, in *Webb v. Overseers of Aston* (1843), 5 M. & G. 17 ; 13 L. J. C. P. 57. This case decided that a long lease was for the purpose of the franchise divisible ; so that if it comprise several houses, &c., some of which are not sufficient to confer the borough franchise, the lessee is entitled to a county vote in respect of the lease though it comprises other houses, each sufficient to constitute a borough qualification.

A person on the ownership register, whether as a parliamentary or a parochial elector, is entitled to remain there until struck off by the revising barrister ; but to get on the register in the first instance he must claim : R. A., 1843, s. 4 ; L. G. A., 1894, s. 44 (9).

Voting in more than one Parish.—Although there is nothing in any Act to prevent a person from being registered in more than one parish (L. G. A., 1894, s. 44 (4)), or from being registered in more than one ward of a parish (sect. 44 (6)), he may not vote at an election in more than one ward in the same parish (sect. 48 (2) (iii)), or in more than one parish or other area in the union or district where the election is for a union or for a district not a municipal borough under the M. C.

Acts (*ib.* (ii)). Note that the V. & A. E. Order, 1898, recites sect. 48 (2) (ii), which did not appear to apply to the elections of administrative vestries, but does not recite sect. 48 (2) (iii), although rule 17 of the Order seeks to give effect thereto by making provision for preventing an elector at an election for a parish divided into wards from voting in more than one ward. If sect. 48 (2) (ii) be held to apply to metropolitan boroughs, rules must be framed by the L. G. B. making provision under this enactment for preventing an elector at an election for the borough from voting in more than one parish or other area in a borough. In future the elections will be for boroughs and wards of boroughs, and such wards need not be coterminous with parishes and existing wards in boroughs comprising more than one parish, or with existing wards in boroughs comprising single parishes: sect. 2 (2), p. 9, *ante*.

It would therefore appear that sect. 48 (2) (iii) will not, in its present form be applicable, but that either sect. 48 (2) (ii) will take its place or borough must be read for parish in sect. 48 (2) (iii), the object and effect in both cases being to prevent an elector from voting more than once in a borough where he may be registered more than once.

The law is the same in a provincial borough, where no person may vote in more than one ward (M. C. A., 1882, s. 51 (2)) and in unions and urban districts; and at a county council election a person may be registered, but not vote, in more than one electoral division of the same county: *Knill v. Towse*, 24 Q. B. D. 186, and in C. A. 697.

Qualifications of Councillors.—The qualifications required for being elected a vestryman will be required for a councillor. The L. G. A., 1894, sect. 23 (2), enacts that a person shall not be qualified to be elected or to be a councillor unless he *is* a parochial elector of some parish in the district, or *has*, during the whole of the twelve months preceding the election, resided in the district. It appears, therefore, that a councillor must either be a parochial elector (as to which, see pp. 25—36, *ante*) of the borough for which he is councillor, or have resided within the borough during the whole of the twelve months preceding the election.

Women will not be eligible for the office of councillor, as has been already pointed out (see p. 8, *ante*), notwithstanding that they may possess the necessary qualifications.

A person in order to be registered as a parochial elector for a household qualification is required *inter alia* to have occupied the qualifying property or successive properties within the borough on and during the twelve months preceding the 15th July of the year of registration.

Therefore, a councillor whose qualification is registration may have occupied some qualifying property for at least fifteen months preceding the elections in November, whereas the councillor whose qualification is residence need only have resided in the parish for twelve months preceding the elections. The candidate qualified by residence need not, of course, be rated nor pay rates. Again, sect. 46 (7), L. G. A., 1894, says that when a member becomes disqualified the council shall forthwith declare the office to be vacant. It seems clear, therefore, that the effect of sect. 23 (2), L. G. A., 1894, as applied by sect. 31 (1) of that Act, and this Act, is that a councillor who ceases to be a parochial elector during the period for which he was elected loses his qualification unless he had resided in the parish during the whole of the twelve months preceding his election; for if the qualification be by residence, the elected person who "has . . . resided . . ." has performed the condition which qualified him until the expiry of his term of office, and it would appear that such a person might immediately after the election reside outside the borough and not be disqualified. A person, however, does not cease to be a parochial elector the moment his qualification to be registered ceases; he remains a parochial elector so long as the register containing his name is in force, and is consequently qualified to be a member until a new register without his name comes into force.

Remark also that an alteration in the description or situation of the qualifying property, or a change in the list wherein the name formerly appeared, would have no effect; a man, for example, might be registered in one ward for a house one year and another ward for a factory the next, or be in Division I. one year, and Division III. or the ownership portion or the Separate List the next. He would still remain a parochial elector. And as regards the qualification by residence, it is necessary to bear in mind that the qualification must have been stated in the nomination paper and the member returned upon such qualification in order that its advantage may be secured.

A few observations may be offered as to what constitutes "residence." It is an "ambiguous word," *per* Cotton, L. J.: *Re Bowie*, *Ex p. Breull*, 50 L. J. Ch. 384; and the question as to what is to be considered residence in connection with qualifications for parliamentary and municipal franchises has been repeatedly before the Courts. Here the question is not one of qualification for registration, but for election, and the point of fact to be decided in each case is whether there has been such a degree of inhabitance as to be, in substance and in common sense, a residence: *R. v. Mayor of Exeter* (*Westcombe's*

Case), L. R. 4 Q. B. 110; and cf. *Dipstale's Case*, *ib.* 114. The residence must have been during *the whole* of the twelve months, and the four months' grace allowed by certain Registration Acts (48 Vict. c. 9, s. 2; 54 Vict. c. 11, s. 2; and 52 & 53 Vict. c. 63, s. 17 (3)) is not here admissible. The word "election" includes the nomination: sect. 75 (2), L. G. A., 1894; and therefore the twelve months, which are calendar months in accordance with the Interpretation Act, must be calculated in reference to the date of nomination. Absence, if there be liberty of returning and no abandonment of the intention to return whenever it may suit the person's pleasure or convenience so to do, will not prevent a constructive legal residence, as to which, see *Powell v. Guest*, 34 L. J. C. P. 69; *Bond v. Overseers of St. George, Hanover Square*, L. R. 6. C. P. 314; *R. v. Mitchell*, 10 East, 517; *Durant v. Carter*, L. R. 9 C. P. 261; *Ford v. Pye*, *ib.* 269; *Ford v. Hart*, *ib.* 273; and the recent case of *Stanford v. Williams*, 15 T. L. R. 316. But the residence must be real, substantial, and *bond fide*, and not colourable: *Whithorn v. Thomas*, 7 M. & G. 1; and so far as the qualification for election is concerned, the better opinion would appear to have been expressed by Bayley, J., in *R. v. North Curry*, 4 B. & C. 959—"What is the meaning of the word 'resides'? I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family eat, drink or sleep." In any case, returning officers would do well to bear in mind the dictum of Russell, L. C. J., in *Reg. v. Taylor (g)*—"It is not the duty of the returning officer to look out for objections in fact to nomination papers when handed in, much less to call the attention of rival candidates to them." His duty is to decide objections duly made, and his decision is final; see also *Pritchard v. Mayor of Bangor*, 13 App. Cas. 241.

Casual Vacancies.—By the L. G. A., 1894, s. 48 (4), the provisions of the M. C. A., 1882, with respect to the filling of casual vacancies were made to apply to vestries subject to such adaptation, alteration and exceptions as might be made by Rules of the L. G. B. The Rules are contained in the V. A. E. O., 1898, p. 22, *ante*, to which reference must be made for the procedure for filling casual vacancies. These provisions and Rules apply; but see the note, p. 23, *ante*.

Casual vacancies arise in the following cases:—

Sect. 46 (7) of the Act of 1894 provides that where a member

becomes disqualified for holding office, or vacates his seat for absence, the vestry shall forthwith declare the office to be vacant, and signify the same by notice signed by three members, and countersigned by the clerk, and the office shall thereupon become vacant. Also, adapted sect. 36 of the M. C. A., 1882, provides that a member may at any time by signed writing delivered to the clerk resign the office on payment of the fine, when the vestry shall forthwith declare the office to be vacant and signify the same by notice in writing signed by three members, countersigned by the clerk, fixed on the principal external gate or door of the vestry's offices, and the office shall thereupon become vacant. Again, sect. 46 (6) of the Act of 1894 provides that if a member is absent from the council meetings for more than six months consecutively, except in case of illness or for some reason approved by the council, his office shall on the expiration of those months become vacant, and then the procedure set out in sub-sect. 7 has to be followed.

Again, a casual vacancy is occasioned upon a person being returned for more than one ward, when the acceptance of office for one ward creates a vacancy in the other: sect. 34 (5) of M. C. A., 1882. Again, by sect. 40 (3) of the M. C. A., 1882, non-acceptance of office creates a casual vacancy. Again, there are the disqualifications named in note (o), p. 44, *post*, as well as those enumerated in sect. 46 of the Act of 1894. To these must be added the disqualification which arises from cesser of registration as parochial elector (sect. 23 (2) of L. G. A., 1894); and lastly, there is the vacancy caused by death. Reviewing, however, the various provisions as briefly stated above, it will be noticed that a casual vacancy is created *ipso facto* by (A) Death; and by (B) the Choice of seat upon a plural return being completed by the formal acceptance of office; and (C) by Non-acceptance of office confirmed by the payment of the fine. But as regards (D) Resignation, there must be, to complete the creation of the casual vacancy, (a) signed writing, (b) delivery to clerk, (c) payment of fine, (d) declaration by council that the office is vacant, (e) the formal notice signed by three members and countersigned by clerk signifying the same, and (f) publication thereof outside the town hall. So, too, with regard to (E) Absence, there has to be (a) expiration of six calendar months' absence from meetings of the council, (b) not owing to illness, or (c) no reason or excuse forthcoming approved by the council, and then the procedure (d), (e) and (f) has to be observed as in the case of resignation. With regard to (F) Disqualifications, including (G) Cesser of registration, sect. 46 (7) has also to be observed before the vacancy

technically exists, although, of course, persons disqualified must bear in mind the penalties attaching under sect. 48 (8) to acting when disqualified or voting when prohibited.

The law officers of the Crown have given their opinion that the office of vestryman does not in their judgment become vacant until the declaration by the vestry, under sub-sect. (7) of sect. 46 of L. G. A., 1894, has been made, and that the vestry must consider whether illness or an excuse (approved by them) prevents the office from being vacated. The commencement of the six months is to be reckoned from the date of the first meeting of the vestry which the member failed to attend. The approval of a reason for absence may be effectually given under sub-sect. (6) after the expiration of six months of absence. Under a similar provision of the Elementary Education Act, 1870 (33 & 34 Vict. c. 75), Sched. 2, Part I., r. 14, it was held that a school board was not entitled to proceed to the election of a new member in the place of a member who had absented himself on account of ill-health, without first giving him an opportunity of explaining his absence; and an injunction was granted to restrain the election of another member: *Richardson v. Methley School Board*, (1893) 3 Ch. 510; 62 L. J. Ch. 943. If the reason is unsatisfactory, or none is given, the council should proceed to declare the seat vacant and give the notice specified in sect. 46 (7). Thereupon the office becomes vacant. Sub-sects. 6 and 7 of sect. 46 do not begin to operate until after the expiration of the six months.

In this connection it may be remarked that a member while attending committee meetings may happen to be absent from the meetings of the council for six months. Attendance at committee meetings is not enough; sect. 46 (6), L. G. A., 1894, enacts with reference to attendance at meetings of the council, and a committee meeting is not a meeting of the council.

Expenses of Elections of Councillors.—The effect of sect. 48 (3) (b), L. G. A., 1894, p. 23, is that candidates for the office of councillor will be exempt from the provisions of the M. E. (C. P.) A., 1884, as to maximum expenses, the time for sending in and paying claims, and the return and declaration respecting election expenses. For the adaptation of that Act to the election of vestrymen, &c., see rule 25 of V. A. E. O., 1898, applied to the election of borough councillors. But see note, p. 23, *ante*.

Disqualifications.—The law relating to the disqualifications of vestrymen will become applicable to the mayor, aldermen and councillors of

a metropolitan borough council. The law is for the most part contained in sect. 46 of the L. G. A., 1894, which is as follows:—

Local Government Act, 1894, s. 46.—(1.) A person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if he—

- (a) is an infant or an alien (*h*); or
- (b) has within twelve months before his election, or since his election, received union or parochial relief (*i*); or
- (c) has, within five years before his election or since his election, been convicted either on indictment or summarily of any crime (*k*), and sentenced to imprisonment with hard labour without the option of a fine, or to any greater punishment, and has not received a free pardon, or has, within or during the time aforesaid, been adjudged bankrupt (*l*), or made a composition or arrangement with his creditors; or
- (d) holds any paid office (*m*) under the parish council or district council or board of guardians, as the case may be; or
- (e) is concerned in any bargain or contract entered into with the council or board, or participates in the profit of any such bargain or contract or of any work done under the authority of the council or board (*n*).

(2.) Provided that a person shall not be disqualified for being elected or being a member or chairman of any such council or board by reason of being interested—

- (a) in the sale or lease of any lands or in any loan of money to the

(*h*) See Naturalization Act, 1870, s. 7; and *Isaacson v. Durrant* (1886), 17 Q. B. D. 54.

(*i*) Generally as to what is parochial relief, see *R. v. Ireland*, L. R. 3 Q. B. 130; *Trotter v. Trevor*, 32 L. J. C. P. 59; *Mashiter v. Dunn*, 6 C. B. 30; *Honeybourne v. Hambridge*, 18 Q. B. D. 418; *Magarvill v. Whitehaven Overseers*, 16 Q. B. D. 242.

(*k*) See *Conybeare v. London School Board* (1891), 60 L. J. Q. B. 44.

(*l*) By sub-sect. 4, p. 43, *post*, disqualification ceases when the adjudication is annulled, or when discharged with certificate that bankruptcy was caused by "misfortune without misconduct." For the meaning of this term, see *In re Lord Colin Campbell* (1888), 20 Q. B. D. 816; and *In re Burgess* (1887), 4 Morrell, 186. These provisions are in the nature of penal enactments, and are to be strictly construed. So a private composition not by deed, a mere assignment for benefit of creditors, and a deed of arrangement under Act of 1887, not under seal, do not come within the section. (*Aslatt v. Corporation of Southampton*, 16 Ch. D. 143; *R. v. Cooban*, 18 Q. B. D. 269; *Hardwick v. Brown*, L. R. 8 C. P. 406.)

(*m*) This does not prevent an officer under one authority being a member of another.

(*n*) Provisions of this kind are intended to prevent members of boards which may have occasion to enter into contracts from being exposed to temptation, or even to the semblance of temptation: *per* Lord Esher, in *Nutton v. Wilson*, 22 Q. B. D. 744. A contract is not the less a contract because it is small in amount: *Lewis v. Carr*, 1 Ex. D. 484; *Nicholson v. Fields*, 7 H. & N. 810.

(*Local Government Act, 1894.*)

council or board, or in any contract with the council for the supply from land, of which he is owner or occupier, of stone, gravel, or other materials for making or repairing highways or bridges, or in the transport of materials for the repair of roads or bridges in his own immediate neighbourhood ; or

- (b) in any newspaper in which any advertisement relating to the affairs of the council or board is inserted ; or
- (c) in any contract with the council or board as a shareholder in any joint stock company ; but he shall not vote at any meeting of the council or board on any question in which such company are interested, except that in the case of a water company or other company established for the carrying on of works of a like public nature, this prohibition may be dispensed with by the county council.

(3.) Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit, as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.

(4.) Where a person is disqualified by being adjudged bankrupt or making a composition or arrangement with his creditors, the disqualification shall cease, in case of bankruptcy, when the adjudication is annulled, or when he obtains his discharge with a certificate that his bankruptcy was caused by misfortune without any misconduct on his part, and, in case of composition or arrangement, on payment of his debts in full.

(5.) A person disqualified for being a guardian shall also be disqualified for being a rural district councillor.

(6.) If a member of a council of a parish, or of a district other than a borough, or of a board of guardians, is absent from meetings of the council or board for more than six months consecutively, except in case of illness or for some reason approved by the council or board, his office shall on the expiration of those months become vacant.

(7.) Where a member of a council or board of guardians becomes disqualified for holding office, or vacates his seat for absence, the council or board shall forthwith declare the office to be vacant, and signify the same by notice signed by three members and countersigned by the clerk of the council or board, and notified in such manner as the council or board direct, and the office shall thereupon become vacant.

(*Local Government Act, 1894.*)

(8.) If any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable on summary conviction to a fine not exceeding twenty pounds.

(9.) This section shall apply in the case of any authority whose members are elected in accordance with this Act in like manner as if that authority were a district council, and in the case of London auditors as if they were members of a district council (o).

2—(6.) The quorum of the borough council shall be one-third of the whole number of the council.

Quorum.—The quorum of a vestry of eighteen members was five; of twenty-four members, seven; of thirty-six members or upwards, nine. Thus a vestry of 120 members needed only a quorum of less than one-thirteenth. The quorum of a district board was seven: sects. (repealed) 28 and 38, M. M. A., 1855. The quorum of the London County Council is one-fourth of the whole number of the council: sect. 75 (15), L. G. A., 1888, and rule 8 of Second Schedule to L. C. C. (General Powers) Act, 1893 (56 & 57 Vict. c. cxxi). The quorum of a municipal borough under M. C. A., 1882, is one-third (rule 10 of Second Schedule to the 1882 Act); as also of a parish council (rule 7 of Part II. of First Schedule, L. G. A., 1894); and of a district council (rule 2, Sched. I., P. H. A., 1875, applied by sect. 59 (1), L. G. A., 1894); and of a board of guardians (*ibid.*).

As to quorum of assessment committee, see p. 118, *post*; and of other committees, see p. 86, *post*.

(o) A further disqualification is that of having been convicted, or reported by an election court within seven years last past, to have been guilty of corrupt practices: M. E. (C. P.) A., 1884, s. 2 (2). This disqualification is unlimited as to the area over which it extends. Under sect. 3 (1) of the Act of 1884 a candidate reported guilty of corrupt practice may be made for ever incapable of holding office in the parish in respect of which the election took place. As to disqualification by agents, see sects. 3 (2) and 36. See also rules 24 and 25 of V. A. E. O., 1898. Another disqualification is that of having been convicted, or reported by an election court to have been guilty of illegal practices. As to period of incapability, see sects. 7, 8 (2), 18, 34, and 36 of the Act of 1884. Sections 19 and 20 of the Act of 1884 make provision for the exoneration of candidates in certain cases of corrupt and illegal practices by agents, and gives power to the High Court and election court to except an innocent act (omission from inadvertence, accidental miscalculation, &c.) from being what would otherwise be an illegal practice under the statute.

As to the number of councillors required to be present for the revocation or alteration of previous resolutions, see sect. 57, M. M. A., 1855, and notes, p. 25, *ante*.

2—(7.) The mayor and an alderman of a metropolitan borough shall be required to accept office within the same period as is allowed in the case of a councillor.

Acceptance of Office.—This provision is an exception to the application of the L. G. A., 1888, to the mayor and aldermen of a metropolitan borough. Under the L. G. A., 1888, incorporating and amending the provisions of the M. C. A., 1882, and the County Councils Elections Act, 1891, the period is three months. Under the Vestrymen and Auditors (London) Election Order, 1898 (Appendix, p. 217, *post*), which, as is shown in the notes, p. 23, *ante*, will apply to borough councillors subject to any further order that may be made by the L. G. B., the period is one month.

2—(8.) The Local Government Board may, on request made by a borough council in pursuance of a resolution of the council passed by a majority of two-thirds of the members present and voting at a meeting of the council duly convened for the purpose, provided that such majority is not less than the majority of the whole council, make an order directing that the whole of the councillors shall retire together on the ordinary day of election in every third year, and may on like request rescind any such order.

Simultaneous Triennial Retirement.—Cf. sect. 20 of L. G. A., 1894, applied to London by sect. 30. A provision in similar terms is contained in sect. 23 (6), L. G. A., 1894, with respect to urban district councils not being boroughs. Simultaneous retirement was already in operation in the cases of two London boards of guardians at the passing of the Act, under orders of the L. G. B. (sub-sect. (6) (b) of sect. 20 of Act), and the remaining twenty-eight boards applied for L. C. C. Orders under the sub-section quoted, thus bringing about simultaneous retirement triennially throughout the county: see L. C. C. Ann. Rep., 1896, p. 59. As to “present and voting,” see note, p. 25, *ante*.

Section 3.

DATE.

3.—*Date for elections of councillors.*—(1.) The first elections of all borough councillors under this Act shall be held on the first day of November one thousand nine hundred, or on such later day, as soon as practicable thereafter, as may be fixed by the Lord President of the Council, who shall also fix a corresponding date for the first elections of mayor and aldermen.

First Elections.—See sect. 27 (1), p. 175, *post*, which provides that an Order in Council shall fix such days, years and times for the retirement of first aldermen and councillors, and give such directions as to the first meetings of the councils, and make such other temporary modifications of the provisions of the Act as may appear to be necessary or proper for making those provisions applicable in the case of the first constitution of a borough council.

See also sect. 33 (1), defining the “appointed day” as the day on which the members of the borough councils first elected under this Act come into office, or such other day (within a wide limit) as the Lord President may appoint, either generally or particularly.

Note that under sect. 16 (1) (h) a scheme may make provision for carrying this Act into effect or any Order in Council made thereunder; and may moreover contain any incidental, consequential, or supplemental provisions which may appear to be necessary or proper for the purposes of the scheme.

By sect. 27 (4) members of elective vestries and district boards in office at the passing of the Act are continued in office until the 1st November or other date fixed by the Lord President: see p. 178, *post*.

As to the printing of the register for the first elections, see sect. 27 (3), p. 176, *post*.

A corresponding Date.—A corresponding date would be the eighth (or if that day should fall on a Sunday the ninth) day after the day fixed by the Lord President: cf. sub-sects. (2) and (3), *infra*.

3—(2.) The ordinary day of election of borough councillors shall be the first day of November, or if that day is Sunday, then the following day.

Ordinary Day of Election of Councillors.—This sub-section follows sects. 52 and 230 (2), M. C. A., 1882. Where the mayor is one of the councillors who are to go out of office, a vacancy occurs in respect of his seat, although, as mayor, he continues in office until his successor has accepted office and subscribed the required declaration.

See sect. 15 (3), M. C. A., p. 13, *ante*, and note thereon.

3—(3.) The ordinary day of election of the mayor and aldermen shall be the ninth day of November, or if that day is Sunday, then the following day.

Ordinary Day of Election of Mayor and Aldermen.—This sub-section follows sects. 61 (1) and 230 (2), M. C. A., 1882. As to the election of mayor, see p. 13, *ante*; and compare as to the election of aldermen, sect. 60 (1) of the M. C. A., 1882: see p. 17, *ante*.

3—(4.) The revised lists of voters in each borough shall in each year after the year one thousand nine hundred be printed and signed before the twentieth day of October, and come into operation as the register for the purpose of borough elections on the first day of November.

Register of Electors for First Elections of Councillors.—Sect. 27 (3) in similar terms enacts that an Order in Council shall provide for the revised register being printed and signed before the 20th October, 1900, so as to be ready for use on the 1st November: see the notes to that section, p. 176, *post*.

Register of Electors for Ordinary Elections of Councillors.—See the notes to sect. 4 (1), p. 49, *post*, as to the preparation of this register.

It is to be noted that only the register for the purpose of borough elections will come into operation on the 1st November. The revised lists will not become the register for parliamentary, county council, or parochial purposes (*i.e.*, for the elections of guardians) until the 1st January following: see hereon note to sect. 27 (2) p. 175, *post*.

Section 4.

POWERS OF BOROUGH COUNCILS.

4. *Transfer to borough councils of powers from vestries and district boards.*—(1.) On the appointed day every elective vestry and district board in the county of London shall cease to exist, and, subject to the provisions of this Act and of any scheme made thereunder, their powers and duties, including those under any local Act, shall, as from the appointed day, be transferred to the council for the borough comprising the area within which those powers are exercised, and their property and liabilities shall be transferred to that council, and that council shall be their successors, and the clerk of the council shall be called the town clerk, and shall be the town clerk within the meaning of the Acts relating to the registration of electors.

Provided that in the case of borrowing powers so transferred, if the London County Council refuse their sanction, or do not within six months after application made give their sanction, to a loan, or attach conditions to their sanction, an appeal shall lie to the Local Government Board, whose decision shall be final.

Elective Vestry and District Board.—Sect. 34 of the Act (p. 205, *post*) defines an “elective vestry” to be *any* vestry elected under the M. M. A., 1855. It also defines an “administrative vestry” (*i.e.*, a Sched. A. vestry), but does not define a “district board,” which may be described as a body incorporated under the Act of 1855, constituted of representatives from a group of elective vestries in Sched. B. to that Act, and endowed with administrative powers under that Act and the Acts amending and extending the same.

Local Act: defined by sect. 34 of Act.

Borough Councils.—For a list of the borough councils to be constituted under the Act, with the parishes comprised in each borough, see Sched. I. and Appendix B.

The **Appointed Day** is defined by sect. 33 (1) of the Act, p. 202, *post*.

Powers and Duties; Property and Liabilities.—For the meaning of these terms, see sect. 34 of the Act, and the incorporated definitions in the L. G. A., 1888, p. 206, *post*.

It is not possible within the compass of this volume to set forth at length the powers and duties of the vestries and district boards. But in a Table of Duties prepared at the instance of the L. C. C. for the information of the R. C. A. L. (Appendices to Report, App. IX. 327—350), will be found a digest of the powers and duties of existing local authorities, set out relatively to those possessed by the county council, under classified heads. In the Introduction to this book a brief survey is made of municipal administration in the county of London by the county council and the borough councils respectively.

Continuance in Office of Vestries, &c. until Appointed Day.—By sect. 27 (3) of the Act (p. 176, *post*), persons who were on the passing of the Act (13th July, 1899) members of elective vestries and district boards, will go out of office on the day on which the first borough councillors elected under this Act come into office, until which date they are to continue in office. As to the first elections, see sect. 3 (p. 46, *ante*). By sect. 33 (1) of the Act (p. 202, *post*), “the day on which the members of the borough councils first elected under this Act come into office” is the “appointed day”; but it may be such other day, not being six months earlier or later, as the Lord President of the Council may appoint, either generally or particularly, and different days may be appointed for different purposes, different provisions of the Act, and different boroughs.

Register of Electors: Town Clerk.—For the purpose of forming the register of electors, the “town clerk” of every city and borough is, by sect. 10 of the R. A., 1843, as amended by sect. 7 (1) of the R. A., 1885, directed in April of every year to deliver to the overseers of every parish within the city or borough a precept containing directions for the compilation of the several lists, and thereupon it is the duty of the overseers to prepare the several lists of persons entitled to be registered as electors, from which lists, as revised by the revising barrister appointed for the purpose, the actual register is formed. By sect. 101, R. A., 1843, the words “town clerk,” except in regard to the cities of London and West-

minster, and the borough of Southwark, extend to and mean any person executing the duties of town clerk, or if there be no such officer or person, then to such person as the returning officer may appoint for that purpose. Sect. 56 defines the term to mean, in regard to the city of London, the secondaries, and in regard to the borough of Southwark, the high bailiff; and by sect. 12 (5) of the Redistribution of Seats Act, 1885, the high bailiff of Westminster was continued to be the "town clerk" for the three new boroughs comprised in the former parliamentary borough of Westminster. As regards the appointment of returning officers, the sheriff of the county is empowered by 2 & 3 Will. IV. c. 45, s. 11, 48 & 49 Vict. c. 23, s. 12, to appoint fit persons. The appointment is to be made under the hand of the sheriff in the month of March in each year; and the person appointed need not now be resident, but he must have an office within the borough. Accordingly, on the high bailiffs of Westminster and Southwark, and the returning officers of the other parliamentary boroughs within the county of London, has hitherto devolved the duty of issuing their precepts to "the overseers," and of compiling the registers of electors. But by sect. 4 (1) the town clerks of the borough councils are to be the town clerks within the meaning of the Acts relating to the registration of electors. And by sect. 11 (1) of the Lon. G. A., p. 103, *post*, they are to have the powers and duties and be subject to the liabilities of overseers with respect to the preparation of lists of voters in the borough. By sect. 27 (2), p. 175, *post*, an Order in Council may adapt the enactments relating to the registration of electors to the provisions of the Act with respect to the powers and duties of the town clerk and overseers, and may apply to London, so far as appears necessary, the law regulating the registration of electors in a municipal borough outside London. This Order will, no doubt, make such provision as will obviate the necessity, resulting apparently from the combined effect of these enactments, for the town clerk as "town clerk" within the meaning of the Registration Acts, to issue a precept upon himself as having the powers and duties and being subject to the liabilities of overseers with respect to the preparation of lists of voters.

The clerks of the county councils of Middlesex, Surrey and Kent, similarly issue their precepts to the overseers of parishes for the compilation of the lists of ownership voters within the parliamentary boroughs for their respective parliamentary counties, and these duties will, by sect. 11 (1) already referred to, be in future performed by the town clerk.

Town Clerk.—The town clerk will be the successor to the “clerk to the vestry” or “clerk to the district board” under the M. M. Acts. As to his appointment, see sect. 62, M. M. A., 1855. No person holding the office of treasurer, nor his partner, nor any person in his employ, can hold the office of clerk: sect. 63, M. M. A., 1855.

In addition to the town clerk being town clerk within the meaning of the Registration Acts, the town clerk will have, under sect. 11 (1), the powers and duties and be subject to the liabilities of overseers with respect to the preparation of lists of voters, and of jury lists in the borough, and any document required to be signed by overseers may be signed by the town clerk. See the notes to sect. 3 (4), p. 47, *ante*, and to sects. 11 (1) and 27 (2), pp. 103 and 176, *post*. As to clerk to the assessment committee, see sect. 13, p. 117, *post*.

As the successor to the “vestry clerk,” he will, *semble*, be the returning officer at the elections of borough councillors. (See rules 1 and 32, V. A. E. O., 1898, applied by sect. 2 (5), Lon. G. A.) In provincial boroughs the mayor at ordinary elections fulfils that office: see sect. 53 M. C. A., 1882.

Reference should be made, as to the duties of a town clerk in a provincial borough, to sect. 17, M. C. A., 1882, and notes thereon in *Arnold's Law of Municipal Corporations*, 4th ed., 1894.

As to the nomination by Order in Council of a person to act as town clerk *pro tem.* for the first meetings of the borough councils, see sect. 27 (1) (c), p. 175, *post*.

Deputy Town Clerk.—As to the appointment of a deputy town clerk, see sect. 25, p. 173, *post*.

Borrowing Powers.—The purposes for which metropolitan borough councils are authorised to borrow are subject in some cases to the sanction of the L. C. C., in others to the consent of the L. G. B.

I.—With the previous sanction in writing of the county council—

- (a) *Paving, lighting, drainage, &c.*—Under sect. 183 of the M. M. A., 1855, for the purpose of defraying any expenses incurred in the execution of that Act.
- (b) *Street improvements.*—The provisions of the above section were extended to street improvements by sects. 72 and 100 of the Metropolis Management Amendment Act, 1862.
- (c) *Mortuaries and hospitals.*—Under sect. 105 (1) of the Public Health (London) Act, 1891, for the provision of mortuaries

(sect. 88) and hospitals (sect. 75), and for the purposes of the epidemic regulations of that Act (sects. 82—87).

- (d) *Disposal of refuse*.—Under the Public Health Act Amendment Act, 1893, for the provision of land, wharves, destructors, plant and equipment for the purposes of the collection, removal and disposal of house and street refuse.
- (e) *Clearance of small unhealthy areas and rebuilding*.—Under the Housing of the Working Classes Acts, 1890 (sect. 46) and 1894 (sect. 1).
- (f) *Working class lodging houses*.—Under Part III. of the Housing of the Working Classes Act, 1890, s. 66.
- (g) *Electric light*.—Under the Electric Lighting Act, 1882, s. 8 and schedule.
- (h) *Town halls*.—Under sect. 24 of L. C. C. (G. P.) A., 1893, for erection of any building to be used partly for purposes of business and partly for public meetings, assemblies, and like purposes.

II.—*With the consent (or approval) of the Local Government Board—*

- (a) *Public conveniences, disinfection, coroners' courts*.—Under sect. 105 (2) of the Public Health (London) Act, 1891, for the purpose of providing—
 - (i) sanitary conveniences, lavatories, and ashpits;
 - (ii) premises, apparatus, carriages and vessels for the disinfection, destruction and removal of infected articles;
 - (iii) buildings for post-mortem examinations and accommodation for holding of inquests.
- (b) *Temporary lodgings*.—Under the L. C. C. (G. P.) A., 1896, s. 32, for the purpose of providing shelter or house accommodation for persons removed from their homes in cases of infectious disease.
- (c) *Expenses of obtaining provisional orders under the Lon. G. A.*.—A loan may be contracted for defraying these expenses: P. H. A., 1875, s. 298, and sect. 28 of this Act, p. 179, *post*.

Where the local authority have adopted and exercised the adoptive Acts:—

- (d) *Baths and wash-houses*.—Under the Baths and Wash-houses Acts, 1846 (sect. 21) and 1878 (sect. 9), and the Companies Clauses Consolidation Act, 1845, incorporated with the Act of 1846 by sect. 23.

(e) *Free public libraries*.—Under the Public Libraries Act, 1892, s. 19, and the borrowing sections of the Public Health Act, 1875, applied therefor.

(f) *Cemeteries*.—Under the Burial Acts, 1852 to 1885.

The L. C. C. derive their powers under sect. 183 of the M. M. A., 1855, which authorises the M. B. W. (now the L. C. C.) and the district boards and vestries to borrow money for carrying out that Act upon the security by mortgage of the local rates, but provided “that no moneys shall be so borrowed by any district board or vestry without the previous sanction in writing of the said Metropolitan Board.” The Lon. G. A., by making the sanction of the L. C. C. subject to an appeal to the L. G. B., is a qualification of the formerly absolute discretion of the London County Council. There is nothing in the Act which affects those purposes where the consent of the L. G. B. is required in the first instance.

By sect. 14 of the Metropolitan Board of Works (Loans) Act, 1875 (38 & 39 Vict. c. 65), where application for a loan is made to the L. C. C. by any body to which the L. C. C. are authorised to lend money, the L. C. C. may, as a condition precedent to the making of the loan, &c., require that body to frame and deliver to the L. C. C. from time to time returns giving such information respecting the financial condition of the body applying as the L. C. C. think expedient. Information has to be furnished upon the following points in particular :—

1. That the expenditure can legally be made and charged on the rates.
2. That the financial state of the parish will justify the proposed increase in the indebtedness.
3. That the amount is not in excess of the reasonable cost of the work either actual or estimated.
4. That the work is such as to justify the cost being spread over a period of years.
5. That the loan will be repaid during the life of the work, so as to preclude the possibility of future ratepayers being saddled with the cost of exhausted works.
6. That the rate of interest does not exceed a reasonable rate.
7. That where any arrangement has been made with the Treasury (such as in electric lighting loans) to spread the entire initial cost over a mean period on the understanding that the works, the object of the loan, shall be renewed or replaced otherwise than by loan during the currency of the mean period, the

council should be furnished with such plans and information as would enable the council at a future date to see that the arrangement is adhered to.

Each Money Act of the M. B. W. and L. C. C. (*vide, ex. gr.*, L. C. C. Money Act, 1896 (59 & 60 Vict. c. cexiv.) s. 12) contains a proviso that where the council lend money to any body, the exercise of whose powers of borrowing is subject to the consent of the L. G. B., the sanction of that Board to the borrowing shall be conclusive evidence that such body had the power so to borrow when the sanction was given.

Under no statute are the local authorities required to go to the L. C. C. or to any other body for the advance of the money; and if it has been the usual practice of the vestries and district boards to borrow of the L. C. C. it has been because that authority has been enabled to offer the best terms. Under the provisions of the Public Works Loans Act, 1897, the Public Works Loan Commissioners are enabled within a certain limit to compete with the L. C. C. By that Act all loans are now placed on the same footing as regards the rates of interest, without any distinction as to the purposes for which such loans are required; the reduced rates of interest are fixed with regard to the duration of the loans, and the minimum rate is not to be fixed at less than $2\frac{3}{4}$ per cent. per annum (*a*). The Treasury Minute, dated 7th August, 1897, dealing with the Act, remarks:—"The Chancellor of the Exchequer attaches importance to the injunction of Parliament that, in this connection, regard should be had to the duration of loans. It is a matter of much consequence that local authorities should not unduly burden the rates of posterity, which is certain to have its own requirements to meet. He therefore favours a sliding scale which, by confining the minimum rate to loans repayable within a moderate period, may act as an inducement to local authorities to curtail the currency of their loans; and the sliding scale which he submits for approval is the following:—

<u>Rates of Interest.</u>	<u>Period of Repayment.</u>
$2\frac{3}{4}$ per cent. per annum :—Not exceeding 30 years.	
3 " "	40 "
$3\frac{1}{4}$ " "	50 " "

The Public Works Loan Board are empowered to make loans to

(*a*) See 23rd Annual Report of Public Works Loan Board, 1897-8, Parl. Paper, No. 228; also circular letter of Local Government Board, dated 27th October, 1897.

London local authorities by sect. 2 of the Public Works Loans Act, 1896, which enacts—"There shall be added to the works for the purpose of which the . . . Commissioners may lend . . . under the Public Works Loans Act, 1875, the following works, namely, any work for which the council of a county, borough, district, or parish are authorised to borrow." The present L. C. C. scale (fixed in July, 1898) is 3 per cent. on loans of 10,000*l.* and upwards, 3½ per cent. on loans under 10,000*l.*

The relative advantage of the two competing public lending authorities therefore turns upon the period of repayment and the amount of the loan respectively.

Period of Loans.

TABLE (b) showing the usual terms of years allowed by the Council and the Local Government Board respectively for various purposes :—

Purpose.	Usual term of years sanctioned.	
	By London County Council.	By Local Government Board.
Freehold land	60	50
Electric lighting	42 for whole, or 20 and 50 for distinct portions	25
Housing of the Working Classes Act, 1890 (Part II.)	60	50
Street improvements	60	30
Bridge improvements	60	30
Mortuaries	30	30
Paving	5 to 20	5 to 20
Sewerage—		
Pipe	20	} 10 to 30
Brick	30	
Parks, gardens, recreation-grounds (laying out)	up to 30	up to 20
Refuse destructors and buildings ..	up to 30	25
Town Hall and offices—		
Buildings	30	} 10 to 30
Fittings and furniture	15	

Local Loans Act, 1875.—Attention should be drawn to the provisions of this Act as to the borrowing by local authorities, the definition of which includes "any authority whatsoever having power to levy a rate," by the raising of loans by the issue of debentures or

debenture stock or annuity certificates. By sect. 31, any local authority, notwithstanding any provision in any other Act of Parliament passed before the passing of that Act, may borrow in manner provided by the Act any loan which it is authorised to borrow, but it would seem, by sect. 6, that the power to issue debenture stock is confined to local authorities having power to raise a loan by the issue of debenture stock.

Finance Act, 1899 (62 & 63 Vict. c. 9).—By the Finance Act, 1899, s. 8, where any local authority propose to issue any loan capital, they are to pay an *ad valorem* stamp duty of two shillings and sixpence for every hundred pounds or fraction thereof; and by sub-sect. 5 loan capital means, *inter alia*, any debenture stock, &c., or any capital raised which is borrowed or has the character of borrowed money; but by sub-sect. 3 the duty is not to be charged to the extent to which it is shown that the stamp duty payable in respect of a mortgage has been paid on any trust deed or other document securing the loan capital.

4—(2.) Where any of the adoptive Acts is adopted within a borough, the borough council shall be the authority for administering the Act; and where any such Act has been adopted before the appointed day, and is administered by commissioners or a board, a scheme under this Act shall abolish the commissioners or board, and transfer their powers, duties, property, and liabilities to the borough council.

Adoptive Acts.—The adoptive Acts are defined by sect. 34 to be the Baths and Wash-houses Acts, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893. The L. G. A., 1894, s. 7 (1), included two others within the same term, namely, the Lighting and Watching Act, 1833, and the Public Improvements Act, 1860. Neither are now of practical importance in London, having regard to the powers formerly possessed by the vestries, and to be possessed by the metropolitan borough councils, with respect to lighting, paving, and improvements under the M. M. Acts.

These Acts, or some or one of them, have been adopted from time to time by the vestries and district boards as the local requirement or local opinion has dictated.

Under the provisions of sect. 33, L. G. A., 1894 (set out p. 137, *post*), certain of the local authorities have made applications to the L. G. B.

and have obtained orders conferring on such vestries, &c., powers, duties, and liabilities of a parish council in regard to these Acts. Sect. 7 (5) of that Act provides that where the area under any existing authority acting within a rural parish in the execution of any of the adoptive Acts is co-extensive with the parish, all powers, duties, and liabilities of that authority shall, on the parish council coming into office, be transferred to that council. The effect of such orders, therefore, has been to transfer to the authorities applying therefor the powers, duties, properties, and liabilities of such Commissioners of Public Baths and Wash-houses, Commissioners of Free Public Libraries and Museums, and Burial Boards as may have been in existence within their respective areas, and to bring the subsidiary bodies to an end. But the consolidation of local administration thus provided for by the Act of 1894 has been by no means generally acted upon; some parishes having taken no advantage of the provision, and others having only partially done so.

The result is that considerable diversity exists in the administration of the adoptive Acts within the county, as is best shown by the following table:—

TABLE giving the places in which the adoptive Acts have been adopted and by whom administered.

Parish having adopted Acts.	Body administering Acts.		
	Administrative vestry or district board.	Elective vestry (schedule B).	Commissioners or other specially constituted body.
Battersea	Baths Burials Libraries	... ..	... ..
Bermondsey	Baths ... Libraries	... ..	... ..
Bethnal-green	Baths ... ..	... ..	... ..
Bow ... ..	... ..	Baths ... Libraries	... ..
Bromley ... ..	... ..	... ..	... ..
Camberwell	Baths Burials Libraries	... ..	... ..
Charlton ... ..	... ..	... ..	... Burials
Chelsea ... ..	... ..	... ..	Baths ... Libraries
Christchurch, Southwark ... ..	... ..	... ..	... Libraries
Clapham ... ..	... ..	... ..	... Burials Libraries
Clerkenwell ... ..	... Libraries	... ..	... ..
Deptford, St. Paul ... ..	... ..	Baths ... ..	... Burials
Fulham ... ..	... Burials	... ..	Baths ... Libraries
Greenwich ... ..	... ..	Baths ... ..	... Burials
Hackney	Baths ... ..	... ..	... ..
Hammer-smith	Baths Burials Libraries	... ..	... ..
Hampstead	Baths Burials Libraries	... ..	... ..
Holborn District ... ..	... ..	... ..	... .. Libraries
Islington	Baths Burials	... ..	... ..
Kensington ... ..	... ..	... ..	Baths Burials Libraries
Lambeth	Baths Burials	... ..	... Libraries
Lee ... ..	... ..	... Burials	... ..
Lewisham ... ..	... ..	Baths Burials Libraries	... ..
Mile-end Old-town ... ..	... Libraries	... ..	... ..
Newington	Baths Burials Libraries	... ..	... ..
Paddington	Baths Burials	... ..	... ..
Penge ... ..	... ..	... ..	... Libraries

Parish having adopted Acts.	Body administering Acts.		
	Administrative vestry or district board.	Elective vestry (schedule B).	Commissioners or other specially constituted body.
Plumstead ... ..	...	...	Baths Burials Libraries
Poplar ... ..	...	Baths ... Libraries	...
Putney ... ..	...	...	... Burials Libraries
Ratcliff ... ..	...	Baths ...	...
Rotherhithe	Baths ... Libraries	...	...
St. Anne, Westminster ... ..	...	...	... Burials ...
St. George-in-the-East ... ..	...	...	Baths ... Libraries
St. George, Hanover-square	Baths Burials Libraries	...	...
St. George, Southwark ... ..	...	...	... Libraries
St. Giles and St. George ... ..	...	...	Baths ... Libraries
St. James	Baths ...	...	...
St. Margaret and St. John.	Baths Burials Libraries	...	...
St. Martin ... ..	...	...	Baths ... } Libraries
St. Paul ... ..	...	...	...
St. Marylebone	Baths Burials ...	...	...
St. Pancras	Baths Burials ...	...	...
St. Saviour ... ..	...	...	Baths Burials Libraries
Shoreditch	Baths Burials Libraries	...	...
Stoke Newington ... ..	... Burials ...	...	... Libraries
Streatham ... ..	...	...	... Burials Libraries
Wandsworth ... ..	...	...	Baths Burials Libraries
Whitechapel ... ..	...	...	Baths ...
Whitechapel district ... ..	...	...	... Libraries
Woolwich	Baths Burials Libraries	...	Baths ... Libraries

The effect of sect. 4 (2) will therefore be to bring about compulsorily by scheme the extinction of the minor bodies (col. 4), and to vest their powers and properties in the new borough councils. Where the transfer of powers has already taken place, the borough councils will, of course, possess them as the successors to the vestries and district boards under sect. 4 (1), *supra*; and under sub-sect. (4), *infra*, a borough council may adopt, in like manner as in a borough outside London, any of the adoptive Acts for the rest of the borough where any such Act does not extend at the appointed day.

Extra Rate.—See sect. 10 (4), and notes thereon, p. 101, *post*.

4—(3.) The powers of a borough council shall, save as in this Act mentioned, extend to the whole of their borough.

Provided that any power or duty of the council under any Act, whether general or local, conferring powers in relation to some particular parish or district, or part of a parish or district, shall be exercised and performed by the council either throughout the borough or in a limited part thereof, or shall cease to be exercised

and performed, as may be provided by a scheme under this Act, having regard to the object of the Act under which the power or duty arises, and to the nature of any change of area or alteration of boundary made by or under this Act.

Power or Duty in relation to some Particular Parish.—Where a borough created by this Act is formed by the grouping of parishes or districts which have hitherto enjoyed autonomy, it will probably be found in every case that one parish or district possesses powers and duties which another does not. This sub-section will enable any such special powers or duties (*e.g.*, those conferred by local Acts) either to be extinguished or continued within the present limits of their exercise or extended so as to be exerciseable throughout the borough. Having regard to the language of sub-sect. 4 of this section it would seem that the adoptive Acts are not within the proviso. Sect. 19 (3), p. 160, *post*, contains a saving for Woolwich parish in regard to technical education and a local market.

4—(4.) Any of the adoptive Acts may be adopted in a metropolitan borough in like manner as in a borough outside London, and not otherwise, and where any of the adoptive Acts adopted before the appointed day does not extend to the whole borough, the Act may be adopted in the rest of the borough in like manner as if it were a separate borough and the borough council were the council thereof.

Baths and Wash-houses Acts, 1846 to 1896.—The Baths and Wash-houses Acts may be adopted for any borough regulated by the M. C. A. by the council itself without recourse to the procedure provided in the case of a parish. By the P. H. A., 1875, the council of any borough may, if they think fit, determine that the Act shall be adopted for that borough, and then and in such case such of the provisions of the Acts as are applicable shall thenceforth take effect and come into operation in the borough, and shall be carried into execution therein in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough: P. H. A., 1875, ss. 6, 10, and 198.

The expenses of carrying the Acts into execution are chargeable upon the borough fund; and the council levy with and as part of the borough rate such sums of money as are from time to time necessary

for defraying such expenses: M. C. A., 1882, s. 144. The income arising from the baths and wash-houses in a municipal borough is paid to the credit of the borough fund: sect. 4 of Act of 1846.

In a metropolitan borough the necessary sums required for carrying the Acts into execution will be raised with and as part of the general rate: sect. 10 (1) and (2), pp. 92 and 97, *post*; and the approximate amount required for the purpose, including an estimated proportion of the cost of collection, will be shown separately on the demand note, in such form as may be approved by the L. G. B.: see p. 115, *post*; see also s. 10 (4), p. 101, *post*.

Public Libraries Acts.—The Public Libraries (Amendment) Act, 1893, enacts that where a library district is an urban district, the Public Libraries Act of 1892 may, subject to the conditions of limitation on expenditure contained in sect. 2 thereof, be adopted, and the limitation of the maximum rate to be levied for the purposes of that Act may, within the limits fixed by that Act, be fixed, raised, or removed, by a resolution of the urban authority.

Sect. 2 of the principal Act provides that the maximum rate for any one financial year shall not exceed a penny in the pound; and that the Act may be adopted for a half-penny or a three-farthing rate, which limits may be afterwards raised or removed by a further poll of the voters.

The consent of the urban authority so given by resolution is substituted for the consent of the voters in any case when the consent of the voters is required under the Act of 1892; and sect. 3 of that Act, relative to the proceedings to be taken for ascertaining the opinion of the voters with respect to adoption, is repealed as to urban districts: sect. 2. Sect. 27 of the Act of 1892 defines the expression "urban district" to mean, *inter alia*, a municipal borough.

Under sect. 3 of the amendment Act, special notice must be given to every member of the council at least one month before the meeting at which it is proposed to pass a resolution to adopt the Act or raise any limit to the maximum. The notice is to be given in the usual manner. The resolution has to be published in one or more newspapers circulating within the borough, and notices have also to be affixed to the church and chapel doors, &c.

A copy of the resolution has also to be sent to the L. G. B. The resolution comes into operation at a time not less than one month after the first publication of the advertisement of the resolution as the authority may by the resolution fix. A copy of the resolution is con-

clusive evidence of the resolution having been passed unless the contrary be shown. Sect. 4 gives power for two or more municipal councils as library authorities to combine by agreement for any period for carrying the Act into execution, the expenses to be divided as may be agreed; and a joint committee may be formed, the members whereof shall be appointed by the several combining authorities in such proportions as may be agreed on, but need not be members of any of the combining authorities. Any such committee are to have such of the powers of a library authority, except that of borrowing money, as may be conferred on them by the agreement between the respective councils: see also sect. 8, *Lon. G. A.*, p. 88, *post*, which confers similar powers in regard to any committee or joint committee that may be appointed.

Burial Acts.—Upon the petition of the council of any borough, stating that an Order in Council has been made for closing all or any of the burial grounds of one or more parishes, being wholly or partly within such borough, and there is difficulty or inconvenience under the 16 & 17 Vict. c. 134, of providing requisite places of burial for the inhabitants of such places, her Majesty may by Order in Council direct that the powers for providing such places of burial shall be vested in the town council: 17 & 18 Vict. c. 87, s. 1. Notice of the petition and of the time when it will be taken into consideration, is to be published in the *London Gazette* and a newspaper usually circulating in the borough, a month before the petition is considered.

Upon the making of such Order, if the town council decide on providing burial grounds, such council shall be a burial board for the purpose, and the provisions of the former Acts are to be applicable to the town council. The provisions of 15 & 16 Vict. c. 85, mentioned in 16 & 17 Vict. c. 134, s. 7, except the provisions relating to the constitution, incorporation, meetings, entries of proceedings, and accounts of burial boards, are extended and made applicable to the borough and the council, and to any burial grounds, &c., which may be provided by such council; but no approval, sanction, or authorisation of the vestry of any parish is requisite: 17 & 18 Vict. c. 87, ss. 1 and 2. The expenses are to be paid out of the borough fund or borough rates (sect. 3), and any surplus funds are to be applied in aid of that fund instead of in aid of the poor rate: 20 & 21 Vict. c. 81, s. 22; or the money may be raised by the council, if they think fit, by means of a separate rate, to be called a burial rate, to be charged upon all property within the borough liable to be charged to the burial rate. In a

metropolitan borough the expenses will be met out of the general rate : sect. 10 (1) and (2) ; and the demand note will show the approximate amount in the pound required for such purpose, including, as far as is practicable, the proportionate amount of the costs incidental to collection : sect. 11 (3) (d) (e).

Power to adopt Adoptive Acts.—It does not appear that the borough councils will have power to adopt an adoptive Act for part only of the borough, except where, before the passing of the Act, an adoptive Act has been adopted in a part of what becomes the borough, in which case the Act may be adopted in the remaining part of the borough.

Section 5.**TRANSFER OF POWERS FROM LONDON COUNTY COUNCIL.**

5. *Transfer of powers from London County Council.*—(1.) As from the appointed day the powers and duties of the London County Council under the enactments mentioned in Part One of the Second Schedule to this Act shall, subject to the conditions mentioned in that schedule, be transferred to each borough council as respects their borough.

Powers of London County Council transferred.—The statutory provisions respecting these powers are mentioned in Part I. of the Second Schedule.

The following are the powers and duties so transferred, with the annual cost to the L. C. C. of their execution during 1897-8:—

- (1.) Licensing setting up of wooden structures—*Cost too small to be stated.*
- (2.) Removal of unauthorised sky-signs—*Gross expenditure, 386l. ; less receipts, 39l. ; net expenditure, 347l.*
- (3.) Removal of obstructions in streets—*Very small; but there is stated to be an annual charge for repayment and interest of debt of about 600l.*
- (4.) Registration of dairymen, put at 500l., being one-third the gross total cost of inspection of cow-houses, dairies, slaughter-houses and offensive businesses.
- (5.) Supervision of common lodging-houses—*Stated to be 2,244l.*

The above figures are taken from a published Report by the Comptroller of the L. C. C. : 17th March, 1899, No. 424.

The total cost, therefore, of the administration of these powers is at the most 4,000l. per annum. Under sect. 7 (1) of the Act (p. 83, *post*), the county council are to contribute to the borough councils in respect of these expenses : see notes to sect. 7.

5—(2.) As from the appointed day the powers of the London County Council under the enactments mentioned in Part Two of the Second Schedule to this Act may, subject to the conditions

mentioned in that schedule, be exercised also by each borough council as respects their borough.

Concurrent Powers of London County Council and Borough Councils.—The statutory provisions relating to these powers are mentioned in Part II. of the Second Schedule.

The powers are :—

- (1.) Demolition of buildings in case of conviction under sect. 170 of the London Building Act, 1894. The borough council must have obtained the conviction.
- (2.) To take proceedings in respect to timber, &c., stacked or stored within the borough.
- (3.) Regulations as to waste of water and water fittings, to be exercised only with respect to a water company supplying any part of the borough.
- (4.) To make, or appear in opposition to, certain complaints under sect. 7, Railway and Canal Traffic Act, 1888.
- (5.) To acquire land (but only for the purpose of any of the powers or duties of the borough council) under sect. 65 of the L. G. A., 1888. *See notes, p. 66, post.*
- (6.) To adopt Part III. of the Housing of the Working Classes Act, 1890 (within borough only).
- (7.) To make by-laws under sect. 23 of the M. C. A., 1882, to be in force only within the borough and not to be inconsistent with any by-laws made by the county council.

The exercise of the powers by the borough councils is restricted to within their respective boroughs, and is subject also to the other conditions above indicated.

The L. C. C. cannot be called upon to make any contribution to the cost of the exercise of these concurrent powers.

Housing of the Working Classes Act, 1890, Part III.—Part III. of the Housing of the Working Classes Act gives full powers to the authority adopting it to provide and let “lodging houses” for the working classes, which expression is deemed to include separate houses or cottages for the labouring classes, whether containing one or several tenements.

The local authorities may among other things purchase or rent land and erect thereon buildings suitable for lodging houses for the labouring classes, and convert any buildings into lodging houses for those

classes, and alter, enlarge, repair and improve the buildings, and fit up, furnish and supply them with the requisite furniture and conveniences.

The borough councils, as the successors of the vestries and district boards, will also be the local authorities under Part II. of this Act, relating to unhealthy dwellings: sect. 92 and First Schedule.

For the law relating to the housing of the working classes, see Allan's "Housing of the Working Classes," ed. 1898.

Bye-laws for good Rule and Government.—The power to make bye-laws under sect. 27 of the M. C. A., 1882, as applied by sect. 16 of L. G. A., 1888, is important. A series of bye-laws was made by the L. C. C. and came into operation on the 1st October, 1898, dealing with (1) steam organs, shooting galleries and roundabouts; (2) noisy animals; (3) lights to vehicles; (4) street betting; and (5) penalties. Seeing that the L. C. C. have dealt with but four matters, the condition against inconsistency contained in the second volume to the schedule may not prove to be restrictive.

5—(3.) The Local Government Board may, if they think fit, on the application of the London County Council and of the majority of the borough councils, make a Provisional Order for transferring to all the borough councils any power exercisable by the County Council, or for transferring to the County Council any power exercisable by the borough councils.

Future Transfers of Powers: London County.—As the application has to be a combined one between the L. C. C. and a majority of the borough councils in regard to a transfer of any power either from or to *all* the borough councils, uniformity throughout the county is aimed at in this respect.

As to defraying the expenses incidental to obtaining a Provisional Order, see sect. 28 (1) of Act, p. 179, *post*, and sect. 298, P. H. A., 1875, p. 180, *post*; and as to expense of administering any power transferred to the borough councils, and provision for contribution by county councils, see sect. 7 (1) and (2) of Act, pp. 83—84, *post*.

5—(4.) The Local Government Board may also, on the joint application of the London County Council and the Common Council of the City of London, make a Provisional Order transferring any

power from the County Council to the Common Council, or from the Common Council to the County Council.

Future Transfer of Powers: City of London.—This sub-section places the Common Council of the City of London in a somewhat different position from that of a borough council, inasmuch as the former is under no necessity to obtain the concurrence of a majority of the borough councils as under the preceding sub-section. As to the expenses of administration and contribution from county councils, see sect. 7 (1) and (2), applied by sub-sect. (3) as if the Common Council were a borough council.

Acquisition of Land.—As to the powers possessed by the vestries and district boards to acquire land, see sects. 151 and 152, M. M. A., 1855; sect. 99 (5), P. H. A., 1891; and Met. Paving Act, 1817, ss. 80—82. These powers will be possessed by the borough councils, supplemented by the important provision that sect. 65 of the L. G. A., 1888, may also be exercised by a borough council as respects the borough: sect. 5 (2), pp. 63—64, *ante*, and Second Sched., Part II. The text of the section, and sects. 176—178, P. H. A., 1875, incorporated therewith, are printed in the notes to that schedule. As to the alienation of land, see sect. 6 (5), Lon. G. A., p. 75, *post*, and sect. 32, p. 201, *post*.

Section 6.**ADDITIONAL POWERS.**

6. *Additional powers and duties of borough councils.*—(1.) As from the appointed day the power and duty of maintaining any main road existing at the passing of this Act within a borough shall be transferred to the borough council, and the road shall vest in the borough council and shall cease to be a main road.

Appointed Day.—See sect. 33 (1), p. 202, *post*.

Main Roads Maintenance.—The effect of this provision is to extinguish “main roads” in the county of London. A main road is defined by the Highways and Locomotives (Amendment) Act, 1878, 41 & 42 Vict. c. 77, s. 13 (from which Act the Metropolis was expressly excluded), as a road disturnpiked since December 31st, 1870, and also any road which might be declared to be a main road under sect. 15. The term includes the footways upon or at the sides of the road: *Derby County Council v. Matlock Bath U. D. C.*, 65 L. J. Q. B. 419; 1896, A. C. 315, and cases there cited. By sect. 41 (4), L. G. A., 1888, the provisions of that Act as to main roads were, with the amendments contained in sect. 11, extended to the Metropolis, and the duty of maintaining “main roads” so defined, within the county, was cast upon the L. C. C.

The Government formerly granted to the local highway authorities (*i.e.*, the vestries and district boards) one-fourth the total cost; but in the last financial year prior to the coming into operation of the Act of 1888, the Government grant in the Metropolis and throughout England

and Wales was one-half of the total cost. Particulars as to these roads are :—

Name of Parish or District.	Name of Road.	Length.	Amount of Annual Contribution by L. C. C.
		<i>Mts. fur. yds.</i>	<i>£</i>
Hackney	Lea-bridge-road	- 4 27	220
Hampstead	Finchley-road	1 6 86	} 2,020
	Edgware-road	- 7 -	
Islington	Archway-road	- 3 20	Say 450*
Kensington	Harrow-road	- 2 68	Say 84
Limehouse	Commercial-road East (part) ..	- 5 142	} 1,410
	East India Dock-road (part) ..	- - 200	
	Horseferry-branch-road	- 1 18	
	West India Dock-road (part) ..	- 1 165	} 560
Mile-end Old-town	Commercial-road East (part) ..	- 4 92	
Poplar	East India Dock-road (part) ..	1 2 186	} 1,641
	West India Dock-road (part) ..	- - 169	
	East and West Ferry-roads....	2 2 73	
St. George-in-the-East .	Commercial-road East (part) ..	- 3 86	380
Stoke Newington	Green-lanes, from parish boundary at Tottenham southward to parish boundary near Olisold-park	- 7 110	} Say 580
	Seven Sisters-road	- 4 117	
	Total	11 2 19	£7,345

* The L. C. C. in this case pay the actual cost each half-year.

Sect. 11 of the Act of 1888 provided three methods of dealing with these roads:—1. The vestries or district boards as local highway authorities might, within twelve months from 1st April, 1889, *claim* to retain the power and duty of repairing and maintaining (sub-sects. 2 and 3), and where such a claim was made the L. C. C. should make an annual payment to be settled by agreement, or, in absence of agreement, such sum as the L. G. B. might determine. 2. The vestry or district board might *agree* with the L. C. C. to maintain and repair on terms settled between them. 3. The L. C. C. might *require* the vestry or district board to undertake the maintenance, &c. of any road within their jurisdiction, in which case the amount of the L. C. C.'s contribution was, in default of agreement, to be settled by the L. G. B. (sub-sect. 4), and in those cases in which the local authorities did not elect to retain the management of the roads the Council exercised this power.

Sect. 15 of the Highways Act, 1878, as applied by sect. 41 of the L. G. A., 1888, enabled the county council—if it was satisfied that any

road specified in an application by a local highway authority ought to be a main road—to make a declaring order accordingly; but no such order was ever made.

Note that no control is reserved to the L. C. C., although under sect. 7 (1) of Lon. G. Act a charge will still fall on the county rate.

6—(2.) Where a highway in a borough is repairable by the London County Council by reason of its being the roadway or footway of a bridge, embankment, or otherwise, the borough council shall, if so required by the county council, undertake the maintenance and repair thereof in consideration of such annual payment by the county council as may from time to time be agreed on, or in default of agreement be finally determined by the Local Government Board, and for the purpose of the undertaking the borough council shall have the same powers and be subject to the same duties and liabilities as if the highway were vested in them.

Embankments, &c.—This transfer can only take place upon the initiative of the L. C. C. It was held in *Mayor, &c. of Burnley v. Lancaster County Council* (1889), 54 J. P. 279, that scavenging (*i.e.*, watering, removing refuse, and scraping) came within the meaning of “maintenance and repair” in sect. 13 of Highways Act, 1878.

Under the Thames Embankment Act, 1862 (25 & 26 Vict. c. 93), s. 22, and the Thames Embankment (North) Act, 1872 (35 & 36 Vict. c. lxxvi), ss. 3, 4, 5, and 8, the L. C. C. maintain, manage and control the Victoria Embankment, and maintain, cleanse, and light the roadway thereof, and are empowered to make bye-laws for the protection of the embankment and its ornamental gardens. Similarly with regard to the Albert Embankment under the Thames Embankment (South) Act, 1873 (36 Vict. c. vii), ss. 2 to 5, to the Chelsea Embankment under M. B. W. (Various Powers) Act, 1876 (39 & 40 Vict. c. lxxix), ss. 34—36, and the London Parks and Works Act, 1887 (50 & 51 Vict. c. 34), ss. 1—3 (*a*).

Under sect. 3 (viii), L. G. A., 1888, there were transferred to the L. C. C.

(*a*) See also Thames Embankment (North and South) Act, 1868 (31 & 32 Vict. c. iii), Charing Cross and Victoria Embankment (Approach) Act, 1873 (36 & 37 Vict. c. 100), Thames Embankment (Land) Act, 1873 (36 & 37 Vict. c. 40), Metropolitan Improvement Act, 1863 (26 & 27 Vict. c. 45), Thames Embankment (South) Act, 1863 (26 & 27 Vict. c. 75), Thames Embankment (Chelsea) Act, 1868 (31 & 32 Vict. c. 135).

“bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority.” Although the justices exercised no jurisdiction in the Metropolis under that Act, their powers and duties in respect thereto as “main roads” passed under sect. 41 (4) of L. G. A., 1888, and under sect. 40 (8) the L. C. C. succeeded to the toll bridges acquired by the M. B. W. under the Metropolitan Toll Bridges Act, 1877 (40 & 41 Vict. c. xcix.), viz., Waterloo, Lambeth, Vauxhall (now demolished), Chelsea, Albert, Wandsworth, Putney, Hammersmith, and Deptford Creek bridges. Westminster bridge was transferred from the Commissioners of Works to the M. B. W. in 1887 by the London Parks and Works Act (50 & 51 Vict. c. 34). All these bridges are now declared to be county bridges by the L. C. C. (G. P.) A., 1895 (58 & 59 Vict. c. cxxvii.), s. 46. Under the Metropolitan Toll Bridges Act, 1877, the public also possess a perpetual right of free use of footbridge (Hungerford bridge) upon the South Eastern Railway Charing Cross bridge. London, Southwark, Tower and Blackfriars bridges are owned by and under the control of the City Corporation, and are maintained out of the Bridge House Estates. Except where a main road repairable by the county council under sect. 11 of L. G. A., 1888, passes over a county bridge, or where such bridge was built previous to 1835, the road over a county bridge and its approaches is repairable by the highway authority, and not by the county: Highway Act, 1835 (5 & 6 Will. IV. c. 50), s. 21; *Reg. v. Southampton County*, 17 Q. B. D. 424; 55 L. J. M. C. 158.

6—(3.) The power of a borough council to close or stop up a street under section eighty-four of the Metropolis Management Amendment Act, 1862, shall not require the sanction or allowance of the London County Council. Provided that before closing or stopping any such street the borough council shall give notice to the councils of any contiguous boroughs.

Closing of Streets.—Sect. 84 of the Metropolis Management (Amendment) Act, 1862, is as follows :—

“It shall be lawful for any vestry or district board, [with the previous sanction of the Metropolitan Board of Works,] to close or stop up any street within their parish or district, during the execution of any paving, sewerage, or other works by such vestry or board in such street, and to keep the same closed and stopped up for such time as

shall be necessary in that behalf, [and allowed by the Metropolitan Board].”

The words in square brackets are repealed by the Lon. G. A. : see Third Schedule, p. 216, *post*.

Contiguous Boroughs.—The words of the proviso might be construed to mean that where any street is stopped up notice must be given to the contiguous boroughs, although the necessity for such notice would appear to exist only in the case of such streets as were themselves contiguous to other boroughs.

6—(4.) It shall be the duty of each borough council to enforce within their borough the bye-laws and regulations for the time being in force with respect to dairies and milk, and with respect to slaughter-houses, knackers’ yards, and offensive businesses, and for the purpose of performing this duty the borough council shall in all cases have the same powers of entry as they have in the case of slaughter-houses and knackers’ yards, and if the council make default in performing this duty, the provisions of the Public Health (London) Act, 1891, shall apply as if the default were a default under that Act.

Dairies and Milkshops.—Under the Public Health (London) Act, 1891, the expression “dairy” includes any farm, farmhouse, cowshed, milkstore, milkshop, or other place from which milk is supplied, or in which milk is kept for purposes of sale; and “dairyman” includes any cow-keeper, purveyor of milk, or occupier of a dairy: sect. 141. See *Southwell v. Lewis*, 45 J. P. 206.

Sect. 28 confers powers upon the L. G. B. to make orders and regulations for the following purposes:—

- (a) For the registration with the council of all persons carrying on the trade of dairymen.
- (b) For the inspection of cattle in dairies, and for prescribing and regulating the lighting, ventilation, cleansing, drainage, and water supply of dairies.
- (c) For securing the cleanliness of milk vessels used for containing milk for sale.
- (d) For prescribing precautions to be taken for protecting milk against infection or contamination.
- (e) For authorising the council to make bye-laws for any of these purposes.

The Dairies, Cowsheds and Milkshops Orders, 1885 and 1886, made under the Contagious Diseases (Animals) Acts, 1878 and 1886, not having been revoked or replaced by any subsequent Order, are still in force, although the sections under which they were made are repealed by the Act of 1891 (sect. 141 and 4th Schedule); and regulations made thereunder by the Metropolitan Board of Works, dated 3rd July, 1885, are also in operation. The powers possessed by the L. C. C. to make bye-laws may be exercised from time to time as occasion requires, and includes the power of rescinding, revoking, amending, and varying the same: 52 & 53 Vict. c. 63, s. 32.

It is not thought necessary to set out these bye-laws and regulations here, as being of limited interest, and sufficiently well known by the trades particularly interested. See "Bye-laws and Regulations" published by L. C. C., No. 393, 1898, pp. 126—138.

Hitherto the power of the local sanitary authority in regard to dairies has, since the passing of the Act of 1891, been confined to the power given by sect. 71 to prohibit the sale of milk in the case of infection attributable to a source of supply situate without or within the district.

The effect of the provision is to put the borough councils in the same position as the Common Council of the City to administer and enforce the Dairies, &c., Orders and the bye-laws made thereunder.

It will be observed that the power conferred on the L. C. C. by sect. 28 of the Act of 1891 of registering dairymen is transferred by sect. 5 and Part I. of the Second Schedule to the Lon. G. A., to the borough councils, subject to the power of the L. C. C. to act in default of the borough council.

Slaughter-houses, Knackers' Yards and Offensive Businesses.—The Slaughter-houses, &c. (Metropolis) Act, 1874, was repealed by the P. H. A., 1891; but sect. 142 (2) (b) provides that all bye-laws, "duly made or issued under or having effect in pursuance of any Act hereby repealed, shall be of the same validity and effect as if they had been given, made or issued under this Act." In pursuance thereof and sect. 45 of the L. G. A., 1888, the L. C. C. have made "Bye-laws for regulating the conduct of a slaughterer of cattle in the county of London," confirmed by the L. G. B., 27th October, 1891. Bye-laws were also made by the Metropolitan Board of Works, allowed 8th September, 1876, for regulating the conduct of the business of a blood-boiler, bone-boiler, manure manufacturer, soap-boiler, or tallow-melter; with regard to the business of a fat-melter or fat-extractor, 15th March, 1881; the

business of a knacker, 28th February, 1876; of a blood-drier, 10th May, 1879; of a gut-scraper (other than cat-gut), 20th November, 1882; of an animal-charcoal manufacturer, 29th August, 1888; of a glue and size manufacturer, 18th August, 1879; of a tripe-boiler, 8th September, 1876; and of a cat-gut maker or manufacturer, 28th March, 1877.

These bye-laws are too long to be reproduced in this work; they will be found in the published "Bye-laws and Regulations" of the L. C. C. (pp. 139—194).

The Public Health (London) Act, 1891, defines a "slaughterer of cattle or horses" to be a person whose business it is to kill any description of cattle, or horses, asses, or mules for the purpose of the flesh being used as butcher's meat; and a "knacker" as one whose business it is to kill any horse, ass, mule, or cattle which is not killed for the purpose of the flesh being used as butcher's meat. A slaughter-house or knacker's yard is any building or place used for the purpose of such business. "Cattle" includes sheep, goats and swine.

See the following cases: *Liverpool Cattle Market Co. v. Hodson*, 36 L. J. M. C. 30; L. R. 2 Q. B. 131; *Hides v. Littlejohn*, 74 L. T. (N. S.) 24; *Cardiff Manure Co. v. Cardiff Union*, 54 J. P. 661; *Withington Local Board v. Manchester Corporation*, 62 L. J. Ch. 393.

The L. C. C. annually licenses all slaughter-houses, knackers' yards and cowhouses, and may make further bye-laws with regard to offensive businesses under sect. 19 (4) of the Act of 1891. Those already in force are apparently deemed to be sufficient.

Power of Entry.—The power of entry here referred to is conferred upon the vestries and district boards by sect. 20 (7) of the Public Health (London) Act, 1891:—"The sanitary authority shall have a right to enter any slaughter-house or knacker's yard at any hour by day, or at any hour when business is in progress or is usually carried on therein, for the purpose of examining whether there is any contravention therein of this Act or of any bye-law made thereunder."

As to the exercise of the power of entry, see sect. 115 of the Act of 1891. By sub-sect. (2) (a), the person or officer representing the sanitary authority and claiming the right to enter shall, if required, produce some written document, properly authenticated on the part of the sanitary authority, showing the right of the person producing the same to enter. Refusal to admit carries with it a liability to a fine not exceeding 5*l.*: sect. 115 (2) (b). The words "by day" mean from 6 a.m. to 9 p.m.: sect. 141. See *Small v. Bickley*, 39 J. P. 422;

40 J. P. 119; *Borrow v. Howland*, 60 J. P. 391; 74 L. T. (N. S.) 787; *Umfreville v. Lon. C. Council*, 61 J. P. 84.

The sanitary authorities, *i.e.*, borough councils, will also possess power of entry under sect. 10 of the Act of 1891.

Default by Borough Council.—The provisions referred to of the Public Health (London) Act, 1891, are as follows:—

100. The county council, on it being proved to their satisfaction that any sanitary authority have made default in doing their duty under this Act with respect to the removal of any nuisance, the institution of any proceedings, or the enforcement of any bye-law, may institute any proceeding and do any act which the authority might have instituted or done for that purpose, and shall be entitled to recover from the sanitary authority in default all such expenses in and about the said proceeding or act as the county council incur, and are not recovered from any other person, and have not been incurred in any unsuccessful proceeding.

101.—(1.) Where complaint is made by the county council to the Local Government Board that a sanitary authority have made default in executing or enforcing any provisions which it is their duty to execute or enforce of this Act, or of any bye-law made in pursuance thereof, the Local Government Board, if satisfied after due inquiry that the authority have been guilty of the alleged default, and that the complaint cannot be remedied under the other provisions of this Act, shall make an order, limiting a time for the performance of the duty of such authority in the matter of such complaint. If such duty is not performed by the time limited in the order, the order may be enforced by writ of mandamus, or the Local Government Board may appoint the county council to perform such duty.

(2.) Where such appointment is made, the county council shall, for the purpose of the execution of their duties under the said appointment, have all the powers of the defaulting sanitary authority, and all expenses incurred by the county council in the execution of the said duties, together with the costs of the previous proceedings, so far as not recovered from any other person, shall be a debt from the sanitary authority in default to the county council, and shall be paid by the sanitary authority out of any moneys or rate applicable to the payment of the expenses of performing the duty in which they have made default.

(3.) For the purpose of recovering such debt the county council, without prejudice to any other power of recovery, shall have the same

(*Public Health Act*, 1891.)

power of levying the amount by a rate, and of requiring officers of the defaulting authority to pay over money in their hands, as the defaulting authority would have in the case of expenses legally payable out of a rate raised by that authority.

(4.) The county council shall pay any surplus of the rate so levied to or to the order of the defaulting authority.

(5.) If any loan is required to be raised for the purpose of the execution of their duties under the said appointment, the county council with the consent of the Local Government Board may raise the same, and may for that purpose borrow the required sum in the name of the defaulting authority for the same period, on the same security, and on the same terms as that authority might have borrowed, and the principal and interest of such loan shall be a debt due from the defaulting authority, and shall be secured and may be recovered in like manner as if the loan had been borrowed by that authority.

(6.) The surplus (if any) of any loan not applied for the purpose for which it is raised shall, after payment of the expenses of raising the same, be paid to or to the order of the defaulting authority, and be applied as if it were the surplus of a loan raised by that authority.

6—(5.) A borough council may, with the consent of the Local Government Board, alienate any land for the time being vested in the council, and the proceeds of the sale of any land sold by the council shall be applied in such manner as the Local Government Board sanction towards the discharge of any loan of the council or otherwise for any purpose for which capital may be applied by the council.

Alienation of Land.—By sect. 42 of the M. M. A., 1855, vestries and district boards were authorised to hold lands without any licence in mortmain, and this power will be possessed by the borough councils.

This section does not appear to confer powers so wide as those contained in sect. 154, M. M. A., 1855, repealed so far as the sale of land is concerned, by the Lon. G. A. (3rd Sched.). Under that section any vestry or district board might sell and dispose of any land purchased by them under the 1855 Act, and any property whatsoever vested in them, without any consent of the L. G. B. or other authority being necessary. Sect. 154 as amended merely enables any council to *let* any land purchased by or vested in them under the Act, and which for the time being is not required, in such manner and on such terms as the council may see fit. See sect. 177, P. H. A., 1875, p. 213, *post*.

The new provision is based upon sects. 64 (3) and 65 (3) of the L. G. A., 1888; see also sect. 8 (2), L. G. A., 1894. Borough councils under the M. C. A. must also obtain the approval of the L. G. B. before disposing of any corporate land: sects. 109 and 115, as amended by L. G. A., 1888, s. 72, substituting the L. G. B. for the Treasury. Cf. *Tepper v. Nichols*, 34 L. J. C. P. 61; 18 C. B. (N. S.) 121.

Sect. 32, Lon. G. A., p. 201, *post*, forbids the alienation of any recreation ground or other open space, or any land held on trusts which prohibit building thereon.

“**Land.**”—By the Interpretation Act, 1889, s. 3, “unless the contrary intention appears, the expression ‘land’ shall include messuages, tenements, hereditaments, and houses and buildings of any tenure.” See also Lands Clauses Consolidation Act, 1845, s. 3, where the word “lands” is extended to messuages, lands, tenements, and hereditaments of any tenure. It does not include easements: *Pinchin v. London & Blackwall Rail. Co.*, 5 De G. M. & G. 851, 862; cf. *Great Western Rail. Co. v. Swindon & Cheltenham Rail. Co.*, 9 App. Cas. 787.

6—(6.) A borough council shall have the same powers of promoting and opposing Bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their borough, as are conferred on borough councils outside London by the Borough Funds Act, 1872, and the provisions of that Act shall extend to the council of a metropolitan borough as if that council were included in the expression “governing body” and the borough were a district in that Act mentioned.

Borough Funds Act, 1872.—The application of the Borough Funds Act, 1872 (35 & 36 Vict. c. 91), confers a new power upon the metropolitan borough councils, and places them in this respect in the same position as provincial boroughs. Metropolitan vestries were unable to apply the rates in the promotion of Bills in Parliament: *Att.-Gen. v. Lambeth Vestry*, 4 T. L. R. 257; (1888) W. N. 19.

The material provisions of the Act are as follows:—

2. When in the judgment of a governing body in any district it is expedient for such governing body to promote or oppose any local and personal Bill or Bills in Parliament, or to prosecute or defend any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of the district, it shall be lawful for such governing body to apply the borough fund, borough rate, or other the public funds or rates under the control of such governing body to the

(*Borough Funds Act, 1872.*)

payment of the costs and expenses attending the same; and when there are several funds or rates under the control of the governing body, such governing body shall determine out of which fund or funds, rate or rates, such expense shall be payable, and in what proportions: Provided that nothing in this Act contained shall authorise any governing body to promote any Bill in Parliament for the establishment of any gas or water works to compete with any existing gas or water company established under any Act of Parliament: Provided that no powers contained in this clause shall apply in any case where the promotion of or opposition to a Bill by a governing body has been decided by a Committee of either House of Parliament to be unreasonable or vexatious.

3. No payment to any member of a governing body for acting as counsel or agent in promoting or opposing any such Bill shall be charged as aforesaid.

4. No expense in relation to promoting or opposing any Bill or Bills in Parliament shall be charged as aforesaid unless incurred in pursuance of a resolution of an absolute majority of the whole number of the governing body at a meeting of the governing body, after ten clear days' notice by public advertisement of such meeting and of the purpose thereof in some local newspaper published or circulating in the district, such notice to be in addition to the ordinary notices required for summoning such meeting, nor unless such resolution shall have been published twice in some newspaper or newspapers circulating in the district, and shall have received, in respect of matters within the jurisdiction of the Local Government Board, the approval of such Board, and in respect of other matters, the approval of one of her Majesty's Secretaries of State, and in case of the promotion of a Bill in Parliament no further expense shall be incurred or charged as aforesaid after the deposit of the Bill, unless the propriety of such promotion shall be confirmed by such absolute majority at a further special meeting to be held in pursuance of a similar notice not less than fourteen days after the deposit of the Bill in Parliament: Provided further, that no expense in promoting or opposing any Bill in Parliament shall be charged as aforesaid unless such promotion or opposition shall have had the consent of the owners and ratepayers of that district, to be expressed by resolution in the manner provided in the Local Government Act (1858) for the adoption of that Act.

5. The approval of the Local Government Board or one of her Majesty's Principal Secretaries of State, as the case may be, shall not be given to any such resolution as aforesaid until the expiration of

(*Borough Funds Act, 1872.*)

seven days after the second publication thereof, as provided by this Act, and in the meantime any ratepayer within the district of the governing body may give notice in writing to the Local Government Board or Secretary of State objecting to such approval.

6. All costs, charges, and expenses incurred under the provisions of this Act shall, before the same become chargeable, be examined and allowed by some person to be authorised by one of her Majesty's Principal Secretaries of State or by the Local Government Board, as the case may be.

7. The Local Government Board, or one of her Majesty's Principal Secretaries of State, shall have power to direct a local inquiry to be held upon any application under this Act, by any person or persons whom they may respectively nominate for the purpose, and to charge the costs and expenses of such local inquiry upon the governing body or the person by whom such application shall be made.

8. Nothing in this Act shall extend or be construed to alter or affect any special provision which is or shall be contained in any other Act for the payment of the costs, charges, and expenses intended to be provided for by this Act, or to take away or diminish any rights or powers now possessed or enjoyed by any governing body, or which are or shall be vested in or exerciseable by the inhabitants of any district under any general or special Act.

10. The provisions of this Act shall not extend to applications for any Bill in Parliament for any object which would, for the time being, be attainable by Provisional Order.

Powers of Borough Councils to oppose Bills in Parliament.—It is to be remarked that the vestries and district boards already possess the same right as other local authorities to oppose Bills affecting either their rights or their property, and as they are not represented by the L. C. C. in the same manner as they were by the M. B. W., they have this right against the L. C. C. to the same extent as against other promoters. It makes no difference whether any proposed Bill affects several parishes or districts or one only. *Locus standi* is not taken away because a Bill which immediately affects the rights or property of a particular parish at the same time and by the similar provisions may affect generally several other parishes or districts. The test is—Do the proposals contained in the Bill seek to alter by statutory enactment the existing rights and obligations of the local authority, or seek to take any property vested in it? If the answer is in the affirmative

there is a *locus standi* even though the Bill is promoted by the L. C. C. Cf. *Att.-Gen. v. Mayor, &c. of Brecon*, 10 Ch. D. 204; 48 L. J. Ch. 153. Consequently the borough councils will not be placed in a better position by the Borough Funds Act as regards the *opposing* of Bills affecting their interests.

Powers of Borough Councils to promote Bills: Consent of Owners and Ratepayers.—In reference to the *promotion* of Bills it is to be noted that the L. G. A., 1858, is repealed by the P. H. A., 1875, and the mode of obtaining the consent of owners and ratepayers is prescribed by Schedule III. of the Act of 1875. The text of the schedule is as follows:—

Public Health Act, 1875, Sched. III.

1. For the purpose of passing a resolution of owners and ratepayers under this Act, a meeting shall be summoned on the requisition of any twenty ratepayers or owners, or of any twenty ratepayers and owners, resident in the district or place with respect to which the resolution is to be passed.

2. The summoning officer of such meeting shall be—

In boroughs, the mayor;

In Improvement Act districts, the chairman of the Improvement Commissioners;

In local government districts, the chairman of the local board;

In places situated in any rural district or districts and having known and defined boundaries, the churchwardens or one of them having jurisdiction co-extensive with the place; or if there are no churchwardens, the overseers or one of them having the like jurisdiction; or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by the Local Government Board.

Where the boundaries of a place are settled by order of the Local Government Board, the Board shall by such order appoint the summoning officer.

If any summoning officer appointed by the Local Government Board dies, becomes incapable, or refuses or neglects to act, the Local Government Board may appoint another officer in his room.

3. Ratepayers or owners making a requisition for the summoning of such meeting shall, if required, give security in a bond with two sufficient sureties for repayment to the summoning officer, in the event of the resolution not being passed, of the costs incurred in relation to such meeting, or any poll taken in pursuance of any demand made thereat; the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agree-

(*Public Health Act, 1875, Sched. III.*)

ment between the summoning officer and such ratepayers or owners, or, in case of dispute, by a Court of summary jurisdiction.

4. The summoning officer shall, on such requisition as aforesaid, fix a time and place for holding such meeting, and shall forthwith give notice thereof—

By advertisement in some one or more of the local newspapers circulated in the district or place;

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

5. The summoning officer shall be the chairman of the meeting unless he is unable or unwilling to preside, in which case the meeting on assembling shall choose one of its number as chairman, who may, with the consent of a majority of the persons present, adjourn the same from time to time.

6. The chairman shall propose to the meeting the resolution, and the meeting shall decide for or against its adoption: Provided that if any owner or ratepayer demands that such question be decided by a poll of owners and ratepayers, such poll shall be taken by voting papers in the Form O. in Schedule IV. to this Act in the same way and with the same incidents and conditions as to the qualification of electors and scale of voting, as to notice to be given by the returning officer, delivery, filling up and collection of voting papers, as to the counting of votes, as to penalties for neglect or refusal to comply with the provisions of the Act, and in all respects whatsoever, as is provided by the rules for the election of local boards in Schedule II. (a) to this Act; except that in districts or places where there is no register of owners and proxies under this Act, any owner or proxy shall be entitled to have a voting paper delivered to him if at least fourteen days before the last day appointed for delivery of the voting papers he sends a claim in writing to the summoning officer containing the particulars required by Schedule II. (a) to this Act, to be contained in claims to be entered on the register of owners and proxies, and except that the provisions with respect to certain specified days of the month shall not apply.

For the purpose of such poll the summoning officer shall be the returning officer, and shall have the powers and perform the duties of a returning officer under Schedule II. to this Act, so far as the same are applicable to a poll under this schedule (a). If no poll is demanded,

(a) The repeal of Schedule II. by the Local Government Act, 1894, does not affect the provision here contained as to the application of these rules to proceedings under the Borough Funds Act, 1872.

(*Public Health Act, 1875, Sched. III.*)

or the demand for a poll is withdrawn by the persons making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

7. A copy under the hand of the summoning officer, of every resolution so passed, shall be forwarded by him to the Local Government Board; and it shall be his duty to publish a copy thereof by advertisement for three successive weeks in some one or more of the local newspapers circulated in the district or place, and by causing a copy thereof to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

8. Where in pursuance of a resolution passed in manner provided by this schedule any place is constituted a local government district, all costs incurred by the summoning officer in relation to the meeting, and any poll taken in pursuance of any demand made thereat, shall be a first charge on the general district rates leviable within such district; in the case of a resolution so passed by owners or ratepayers in any urban district, such cost shall be paid out of the fund or rate applicable by the urban authority to the general purposes of this Act.

Form 0. (*See rule 6, ante, p. 80.*)

FORM OF VOTING PAPER FOR POLL TAKEN UNDER SCHEDULE III.

Voting Paper No. .

At a meeting on the day of at in the county of
, it was agreed that the following resolution should be proposed to the owners and ratepayers of .

[*Set out the resolution.*]

_____	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayer.
Do you vote in favour of or against the adoption of this resolution?				

(Signed) _____
or the mark of _____

Witness to the mark _____
or proxy for _____

T.

G

Directions to the Voter.

The voter must write his initials under the heading "in favour" or "against" according as he votes for or against the resolution, and must subscribe his name and address at full length.

If the voter cannot write he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark.

If a proxy votes he must in like manner write his initials, subscribe his own name and address, and add after his signature the words "as proxy for" with the name of the body of persons for whom he is proxy.

This paper will be collected on the of between the hours of and .

Powers of County Councils to promote and oppose Bills in Parliament.—The Borough Funds Act does not apply to county councils. County councils are not empowered to promote bills by the L. G. A., 1888, but by sect. 15 (a) of that Act they may oppose any bill in Parliament, and the consent of owners and ratepayers is not required. The L. C. C. possess a special power to promote water bills; and see sect. 144 of the M. M. A., 1855, which applies equally to the L. C. C. and the borough councils, and which does not appear ever to have received judicial interpretation.

Section 7.

EXPENSES INCIDENTAL TO TRANSFER.

7. *Expenses incidental to transfer of powers or duties.*—(1.) Where any power or duty is transferred from the London County Council to a borough council or from a borough council to the London County Council by or under this Act, the borough council or county council, as the case may be, shall defray as part of their ordinary expenses the expenses of and incidental to the power or duty, but the county council shall contribute to the borough council, or the borough council to the county council, in respect of those expenses, such amount, if any (whether capital or annual), and subject to such conditions, if any, as may—

- (a) if the transfer is made by this Act, be agreed on between the councils within six months after the transfer, or in default of agreement be finally determined by the Local Government Board; and
- (b) if the transfer is made by a Provisional Order, be fixed by the Order.

Provided that every borough council shall have an opportunity of making a representation to the Local Government Board as to the amount of any contribution under this section to another council, and if the amount is settled by agreement may, within three months from the date at which the agreement is notified to them, appeal against it to the Local Government Board, who may finally determine the amount.

Expenses incidental to Transfer.—The section provides the requisite machinery for effecting the financial readjustments which are rendered necessary by the changes made and contemplated by the Act in the bodies by whom various powers are, in future, to be exercised. If no such provision were made it is obvious that the incidence of local taxation would be considerably affected, as expenditure in respect of powers heretofore exercised by the L. C. C. and by or under this Act transferred

to the new councils, now paid out of the county rate, and therefore equalised throughout the metropolis, would be thrown on the local rates, while the converse would be the case in the event of any powers being hereafter transferred from the local authorities to the central body. This result is avoided by the provision made in the section that the body from whom any power is taken shall make a contribution to the body to whom the power is given in respect of the cost of its exercise. In other words, whilst the power is transferred, the expense incidental to it is not. See also sect. 6 (2), p. 69, *ante*.

Transfers by the Act.—The powers and duties so transferred will be found in sect. 5 (1), p. 63, *ante*, sect. 6 (1) and (4), pp. 67 and 71, *ante*, and Part I. of the Second Schedule.

Transfers under the Act.—With regard to any future transfer of powers, see sect. 5 (3) and (4), p. 65, *ante*, and sect. 6 (2), p. 69, *ante*, and sub-sect. (2) of this section, *infra*.

As part of their ordinary expenses.—The ordinary expenses of the L. C. C. are paid out of the county rate, and the ordinary expenses of the borough councils will be defrayed from the general rate.

In default of agreement.—For the power of the L. G. B. to determine differences, see sect. 28 (3), p. 182, *post*.

7—(2.) Where the transfer is made by Provisional Order the amount of contribution from or to the county council may be varied in each case to meet the circumstances of the case.

Provisional Orders.—As to provisional orders, see sect. 28, p. 179, *post*.

7—(3.) This section shall apply as if the Common Council of the City of London were the council of a metropolitan borough.

City of London.—This sub-section forms, with sect. 5 (4) and sect. 16 (3), an exception to the statement that the City of London is not affected by this Act.

See the notes under the heading "City of London" to sect. 1, p. 5, *ante*.

Section 8.**COMMITTEES.**

8. Committees.]—(1.) Any committee appointed by a borough council for the purpose of the Public Libraries Acts, 1892 and 1893, may consist partly of persons not members of the council.

Public Libraries Acts.—By sect. 4 (2), p. 56, *ante*, the borough council is to be the authority for administering these Acts. Sect. 15 of the Public Libraries Act, 1892, provides for the management of libraries, &c. by the library authority:—

15.—(1.) The general management, regulation, and control of every library, museum, art gallery, and school provided under this Act shall be vested in and exercised by the library authority, and that authority may provide therein books, newspapers, maps and specimens of art and science, and cause the same to be bound and repaired when necessary.

(2.) The library authority may also appoint salaried officers and servants, and dismiss them, and make regulations for the safety and use of every library, museum, gallery and school under their control, and for the admission of the public thereto.

(3.) Provided that a library authority being an urban authority may if they think fit appoint a committee and delegate to it all or any of their powers and duties under this section, and the said committee shall to the extent of such delegation be deemed to be the library authority. Persons appointed to be members of the committee need not be members of the urban authority.

8—(2.) Every committee shall report their proceedings to the council, but, to the extent to which the council so direct, the acts and proceedings of the committee shall not require the approval of the council. Provided that a committee shall not raise money by loan or by rate, or spend any money beyond the sum allowed by the council.

Committees of Borough Councils.—The first part of this sub-section

is taken from sect. 82 (2) of L. G. A., 1888: cf. sect. 22 (2) of M. C. A., 1882, whereby the acts of every committee are to be submitted to the council for approval. Under the Act of 1888 this requirement was dispensed with, but all committees must report to the council. The proviso follows that in sect. 81, Housing of Working Classes Act, 1890 (53 & 54 Vict. c. 70): cf. also L. G. A., 1894, s. 56 (1).

This provision is an enlargement of the powers of committees under sects. 58 and 59 of the M. M. A., 1855, upon the lines of sect. 99 (3) and (4) of the Public Health (London) Act, 1891. Sects. 58 & 59 of the Act of 1855 are as follows:—

58. It shall be lawful for (a) . . . (b) any such vestry . . . (b) to appoint a committee or committees for any purpose which, in the discretion of the . . . (b) vestry would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee . . .

59. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless three members of the committee are present.

Sect. 99 (3) (4) of the Public Health (London) Act, 1891, is as follows:—

99.—(3.) The purposes for which a committee of a vestry . . . may be appointed under the Metropolis Management Act, 1855 (c), and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

(4.) Where a sanitary authority (d) appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

The provision of sect. 81 of the Housing of the Working Classes Act, 1890, is as follows:—

81. For the purposes of this Act, a local authority (e) acting under

(a) Words omitted repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(b) Words repealed by Lon. G. A., Third Schedule.

(c) See sects. 58 and 59, M. M. A., 1855, *supra*.

(d) Defined in sect. 99 (1) (b) (c) (d) and (e). The borough councils succeed these authorities under sect. 4 (1) of Lon. G. A.

(e) For the purposes of Part II. of the H. W. C. A., 1890, defined in sect. 92 and First Schedule; the borough councils succeed under sect. 4 (1), Lon. G. A.

this Act may appoint out of their own number so many persons as they may think fit, for any purposes of this Act which, in the opinion of such authority, would be better regulated and managed by means of a committee: Provided that a committee so appointed shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract, and shall be subject to any regulations and restrictions which may be imposed by the authority that formed it.

Audit of Accounts of Committees.—As to the audit of committee accounts, see sect. 13, *post*, and incorporated provisions.

Control over Committees.—The body appointing a committee does not thereby deprive itself of the powers delegated to the committee, and may exercise such powers at any time without previous revocation of the delegated authority: *Huth v. Clarke*, 25 Q. B. D. 391; 59 L. J. M. C. 120; *Barnsley Local Board v. Sedgwick*, L. R. 2 Q. B. 185; 36 L. J. M. C. 65; *Eaton v. Basker*, 7 Q. B. D. 529; 50 L. J. Q. B. 444. With regard, however, to a library committee to whom had been delegated all the powers of the council as the library authority, it would appear that the committee, to the extent of the delegation, would be independent of the council.

Contracts.—Note that the power to make contracts is not reserved, as is the case with committees appointed by district councils to exercise their powers under the Public Health or Highway Acts: sect. 56 (1), L. G. A., 1894.

8—(3.) Every borough council shall from time to time appoint a finance committee for regulating and controlling the finance of the council; and no order for payment of any sum, whether on account of capital or income, shall be made by a borough council except in pursuance of a resolution of the council passed on the recommendation of the finance committee; and any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee. The notice of the meeting at which any resolution for the payment of any sum by the borough council (otherwise than for ordinary periodical payments) or any resolution for incurring any costs, debt, or liability exceeding fifty pounds will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purpose for which they are to be paid or incurred. Provided that the foregoing provisions shall not apply to payments made in pursuance of a precept from another authority.

is taken from sect. 82 (2) of L. G. A., 1888: cf. sect. 22 (2) of M. C. A., 1882, whereby the acts of every committee are to be submitted to the council for approval. Under the Act of 1888 this requirement was dispensed with, but all committees must report to the council. The proviso follows that in sect. 81, Housing of Working Classes Act, 1890 (53 & 54 Vict. c. 70): cf. also L. G. A., 1894, s. 56 (1).

This provision is an enlargement of the powers of committees under sects. 58 and 59 of the M. M. A., 1855, upon the lines of sect. 99 (3) and (4) of the Public Health (London) Act, 1891. Sects. 58 & 59 of the Act of 1855 are as follows:—

58. It shall be lawful for (a) . . . (b) any such vestry . . . (b) to appoint a committee or committees for any purpose which, in the discretion of the . . . (b) vestry would be better regulated and managed by means of such committee, and at any meeting to continue, alter, or discontinue such committee . . .

59. Every committee so appointed may meet from time to time, and may adjourn from place to place, as they may think proper, for carrying into effect the purposes of their appointment; but no business shall be transacted at any meeting of the committee unless three members of the committee are present.

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99.—(3.) The purposes for which a committee of a vestry . . . may be appointed under the Metropolis Management Act, 1855 (c), and the Acts amending the same, shall include the purposes of this Act, and the provisions of those Acts with respect to committees shall apply accordingly.

(4.) Where a sanitary authority (d) appoint a committee for the purposes of this Act, that committee, subject to the terms of their appointment, may serve and receive notices, take proceedings, and empower any officer of the authority to make complaints and take proceedings in their behalf, and otherwise to execute this Act.

The provision of sect. 81 of the Housing of the Working Classes Act, 1890, is as follows:—

81. For the purposes of this Act, a local authority (e) acting under

(a) Words omitted repealed by 55 & 56 Vict. c. 19 (Stat. Law Rev.).

(b) Words repealed by Lon. G. A., Third Schedule.

(c) See sects. 58 and 59, M. M. A., 1855, *supra*.

(d) Defined in sect. 99 (1) (b) (c) (d) and (e). The borough councils succeed these authorities under sect. 4 (1) of Lon. G. A.

(e) For the purposes of Part II. of the H. W. C. A., 1890, defined in sect. 92 and First Schedule; the borough councils succeed under sect. 4 (1), Lon. G. A.

Statutory Finance Committee.—No provision is contained in the M. C. Acts or M. M. Acts for the appointment specially of a finance committee by provincial boroughs or metropolitan vestries and district boards; but the appointment of a finance committee has become customary. This sub-section is, with the exception of the proviso at the end, *mutatis mutandis* the same as sect. 80 (3) and (4) of the L. G. A., 1888. See also sect. 22, M. C. A., 1882.

As to the form of order for payments, see sect. 9, Lon. G. A., p. 90, *post*.

Note that this provision is not confined to payments due, but extends to prospective liabilities exceeding 50%.

The L. C. C. have created an urgency fund, with a separate banking account, to meet urgent payments; and their finance committee are authorised to make payments thereout for the (i) payment of wages and disbursements of officers, police-court costs, &c.; (ii) in pressing cases the payment of rents, rates, taxes, compensation for accidental injuries (so as to avoid the accumulation of law expenses), moneys required to be paid to secure cash discount, or to make deposits on purchases, &c., and moneys certified due to contractors; and (iii) the payment and discharge generally during a recess of debts or liabilities of the council.

See the published Standing Orders of the L. C. C., No. 309, pp. 111—122, also pp. 54—57, 226—231.

The proviso excludes from the controlling provisions contained in the sub-section the fulfilment by the borough councils as overseers of the obligations imposed by sect. 11 (2), p. 112, *post*.

Audit.—As to the audit of the borough council's accounts, see sect. 14, p. 120, *post*.

8—(4.) Section fifty-seven of the Local Government Act, 1894, which relates to joint committees, shall, with the substitution of the words Local Government Board for County Council therein, apply to borough councils as if they were district councils.

Joint Committees.—This sub-section will meet any need that may arise for joint enterprise between two or more borough councils. Sect. 57 of the L. G. A., 1894, did not apply to London, and the vestries had not power to appoint statutory joint committees. Sect. 235

of the M. M. A., 1855, merely contained a saving for vestries then acting or exercising powers jointly or in union at the passing of that Act.

Sect. 57 of the L. G. A., 1894, is as follows :—

57.—(1.) A parish or district council may concur with any other parish or district council or councils in appointing out of their respective bodies a joint committee for any purpose in respect of which they are jointly interested, and in conferring, with or without conditions or restrictions, on any such committee any powers which the appointing council might exercise if the purpose related exclusively to their own parish or district (*f*).

(2.) Provided that a council shall not delegate to any such committee any power to borrow money or make any rate (*g*).

(3.) A joint committee appointed under this section shall not hold office beyond the expiration of fourteen days (*h*) after the next annual meeting (*i*) of any of the councils who appointed it.

(4.) The costs of a joint committee under this section shall be defrayed by the councils by whom it is appointed in such proportions as they may agree upon, or as may be determined in case of difference by the county council (*k*).

(5.) Where a parish council can under this Act be required to appoint a committee consisting partly of members of the council and partly of other persons, that requirement may also be made in the case of a joint committee, and shall be duly complied with by the parish councils concerned at the time of the appointment of such committee.

Assessment Committee.—See sect. 13, p. 117, *post*.

(*f*) The obligation, *semble*, will not rest upon joint committees to report their proceedings, as in the case of sole committees under sect. 8 (2) of Lon. G. A.

(*g*) This repeats the proviso in sect. 8 (2). The power to make contracts is not reserved, and a joint committee may do so if authorised by its reference.

(*h*) The period of fourteen days named in sub-sect. (3) was doubtless deemed sufficient to provide against a joint committee holding office after the annual meeting of any of the councils who appointed it. The intention should in any case be observed.

(*i*) See sect. 3 (3), Lon. G. A., p. 47, *ante*.

(*k*) L. G. B. substituted for county council by sect. 8 (4) of Lon. G. A., p. 88, *supra*. As to the determination of differences by L. G. B., see sect. 28 (3), *post*.

Section 9.

PAYMENTS.

9. Payments to and by borough council.]—(1.) All payments to and by the borough council shall be made to and by the borough treasurer, and all payments by the council shall, unless made in pursuance of the specific requirement of an Act of Parliament, or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council, and countersigned by the town clerk, and the same order may include several payments. Moreover, all cheques for payment of moneys issued in pursuance of any such order shall be countersigned by the town clerk, or by a deputy approved by the council.

Payments to and by the Borough Council.—This section is *mutatis mutandis* identical with sect. 80 (1) and (2), L. G. A., 1888. Cf. also, sects. 141 and 142, M. C. A., 1882.

The words "the same order may include several payments" would appear to permit of an order being made upon the borough council's bankers as treasurer, containing a schedule of payments sanctioned. Note that all orders must be countersigned by the town clerk, and all cheques by the town clerk, or a deputy, who may conveniently be the paid officer ("comptroller" or "accountant") of the borough council.

As to "signature," see the note to sect. 11 (1), p. 103, *post*.

The finance committee is to be appointed under sect. 8 (3), p. 87, *ante*.

Borough Treasurer.—As to the appointment of treasurer, see sect. 62, M. M. A., 1855. By sect. 63, *ib.*, no person holding the office of treasurer or clerk, nor their respective partners, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or in any manner assist or officiate in the office of clerk or treasurer

respectively. Penalty, 100%. A penalty of 50% attaches to any officer or servant being interested in contracts, or exacting fees other than his proper salary, wages and allowances (sect. 64, M. M. A., 1855); and by sect. 65, *ib.*, any officer entrusted with the custody or control of money must give security for duly accounting for the same.

Cf. sect. 18, M. C. A., 1882, and sects. 3 (iii) and 75 (16) (e), L. G. A., 1888, as to county treasurer. See L. C. C. Standing Order No. 247.

9—(2.) Any such order may be removed into the High Court of Justice by writ of certiorari, and may be wholly or partly disallowed or confirmed on motion and hearing with or without costs according to the judgment and discretion of the Court.

Sub-sect. 2.—This sub-section is the same as sect. 141 (2), M. C. A., 1882. See the notes thereon in Arnold's "Law of Municipal Corporations," 4th ed., pp. 151—3.

Section 10.

LEVY OF RATES.

Rates, Overseers, and Audit.

10. *Levy of rates.*—(1.) A scheme under this Act shall provide for all the expenses of a borough council being paid out of the general rate, and for the discontinuance of a separate sewers rate and separate lighting rate, but shall make provision for protecting the interests of owners and occupiers of any hereditament which is exempt from any rate or liable to be assessed thereto at a less amount than other hereditaments.

Levy of Rates.—Under the M. M. A., 1855, provision was made for a separate rate to be levied for defraying expenses connected with sewerage, to be called a sewers rate; a separate rate for defraying expenses of lighting where the Lighting and Watching Act, 1833, had been adopted, to be called a lighting rate; and a separate rate for defraying other expenses of executing the M. M. Act, to be called a general rate. Where the Lighting and Watching Act had not been adopted, the expenses of lighting were included in the general rate. The lighting and sewer rates will therefore in the future be merged in the general rate.

Except in certain cases hereafter noticed, these rates were, and the general rate will continue to be, assessed on the net annual value, that is, the rateable value. The valuation list in force will be conclusive evidence of the rateable value of the several hereditaments included therein for the purposes of the rate: 32 & 33 Vict. c. 67, s. 45 (1), and sub-sect. 2 of this section, *post*. These rates were raised by equal pound rates on the parish, and the general rate will be raised in the same way: sub-sect. 2 of this section, *post*.

Exemptions.—Sects. 159, 163, 164 and 165, M. M. A., 1855, provided various exemptions from payment of rates. These sections are repealed by the Act (see Third Schedule, *post*), but the scheme to be made under this sub-section is to protect owners and occupiers of any

hereditament affected. It must be noticed that sect. 12, *post*, re-enacting the repealed sect. 169 of the M. M. A., 1855, will protect any tenant from bearing such part of the general rate as represents any part of the sewers rate which the tenant, but for the Act, would have been entitled to as against his landlord. The exemptions are as follows :—

- (a) The vestries and district boards had power to exempt parts of the parish not benefited by any expenditure from payment either wholly or partially of rates in respect of such expenditure (sect. 159).
- (b) As regards all land used as arable, meadow, or pasture ground only, or as woodland, orchard, market garden, hop, herb, flower, fruit, or nursery ground, the sewer rate was to be assessed and levied in the proportion of one-fourth part only of the net annual value of such land (sect. 163).
- (c) By the Metropolitan Sewer Act, 1848 (11 & 12 Vict. c. 112), any property by law or in practice then exempted from or entitled to a reduction of the sewers rate was declared to be still exempt. Sect. 164 of the M. M. A., 1855, continued this exemption.
- (d) Where at the time of the passing of the M. M. A., 1855, the Lighting and Watching Act, 1833, was in force in the parish or the part of the parish in which the lighting rate was levied, by sect. 165 of the M. M. A., 1855, the persons rated to that rate in respect of houses, buildings and property other than land, were to be assessed at a rate in the pound three times greater than that at which persons were to be assessed in respect of land, and if under any other Act land was at that time wholly exempted from being rated in respect of expenses of lighting, or was rated in respect thereof at a less amount in proportion to the annual value thereof than houses, it was to continue exempt from the lighting rate, or was to be rated thereto at such less amount, as the case might be.

Note on this subject the provisions of sect. 16 (1) (d), p. 139, *post*.

The following classes of property are also exempt from rates :—

- (a) Rates are not paid on empty houses, *i.e.*, houses which are unfurnished and unoccupied, although the premises are included in the valuation list.
- (b) Property in the occupation of the Crown is not rated. It is the practice of the Treasury to make contributions in aid of

local rates in respect of this property. (See on this subject sect. 16 (1) (e), p. 139, *post.*)

- (c) By an Act of 1833 (3 & 4 Will. IV. c. 30) no person is to be rated in respect of any church or chapel exclusively appropriated to public religious worship.
- (d) Under an Act of 1869 (32 & 33 Vict. c. 40) every rating authority may, but need not, exempt Sunday schools or ragged schools from any rate the authority have power to levy.
- (e) By the Voluntary Schools Act, 1897 (60 Vict. c. 5), voluntary elementary schools are exempt from being assessed or rated to or for any local rate, except to the extent of any profit derived from the letting thereof.
- (f) By an Act of 1843 (6 & 7 Vict. c. 36) no person is rateable in respect of land, houses, or buildings belonging to any society instituted for the purposes of science, literature, or the fine arts exclusively occupied for carrying into effect its purposes, provided that the society is supported wholly or partly by annual voluntary contributions, and may not make any dividend, and provided that the society has obtained a certificate from the central office constituted under the Friendly Societies Act, 1875 (38 & 39 Vict. c. 68).
- (g) By the Agricultural Rates Act, 1896 (59 & 60 Vict. c. 16), the occupiers of agricultural land pay half only of the rates in respect of such land for a period of five years from the 31st March, 1897. The Act does not apply to any rate to which the occupier of agricultural land is liable, as compared with occupiers of other hereditaments, to be assessed or to pay in the proportion of one half or less than one half. It may be mentioned that vestries, not being included among the authorities to whom the amount lost by the provisions of the Act is to be repaid by the Treasury out of the Local Taxation Account, actually lose a small sum annually in respect of the general rate. The guardians being among the authorities referred to, the amount lost on the poor rate is recovered.
- (h) Rates are not recoverable from ambassadors or other public ministers of any foreign prince or state in respect of property occupied by them, although the property is included in the valuation list. This rule follows from the Statute of 1708 (7 Anne, c. 12), under which, in effect, diplomatic agents are privileged from all liability to be sued in civil actions. In the case of some legations the rates are paid by the Treasury as a matter of grace.

- (i) Parks and open spaces are exempt from being rated (*l*).
- (j) By the Volunteer Act, 1863 (26 & 27 Vict. c. 65), s. 26, store-houses appointed under that Act for the safe keeping of the arms, ammunition, or stores of a volunteer corps are exempt from local rates. Since the passing of the Act it has, moreover, been decided that premises occupied by a volunteer corps, even though not falling within the Act, are exempt from rating, by reason of their being Government property (*m*).
- (k) By the Merchant Shipping Act, 1894, s. 731, lighthouses occupied by any of the general lighthouse authorities or by the Board of Trade are exempted from all rates. This exemption does not apply to lighthouses under the control of local authorities: *Mersey Docks and Harbour Board v. Llaneilian*, 14 Q. B. D. 770; and *L. C. C. v. Erith*, (1893) A. C. 562.

The foregoing are the principal cases where either property is exempt from rating or rates are not recoverable in respect of property which is included in the valuation list, but there are cases of special exemptions conferred by local Acts which cannot be given here.

Composition Allowances and Deductions.—Certain classes of property are allowed partial or total exemption from rating.

Properties at and below 20*l.* in value are, by 32 & 33 Vict. c. 41, allowed a deduction of 15 per cent. from the rates when the rates are paid by the landlord, and a further deduction up to a maximum of 15 per cent. if rates are paid whether the premises are occupied or empty; property not occupied which in the City of London is exempt from rating to the extent of one-half, and in the rest of London wholly exempt; land in respect of which only two-thirds of the sewers rate is levied.

In *Reg. v. Foundling Hospital* (1871), L. R. 7 Q. B. 83; 41 L. J. M. C. 41; 25 L. T. (N. S.) 562, a case arising under the 32 & 33 Vict. c. 67, it was held that the full rateable value of property should be inserted in the valuation list, although under a local Act such property was to be rated at a lower amount.

As to other Exemptions from Rating.—A return of property within the administrative county, wholly or partially exempt from rates by statute, was prepared by the L. C. C. for the Royal Commission on Local Taxation, and is set out in the Appendix to Minutes of Evidence,

(*l*) *Churchwardens, &c. of Lambeth v. L. C. C.*, 61 J. P. 580. An allowance of two-thirds the library rate in respect of arable lands, &c., where the library district is a parish: see 55 & 56 Vict. c. 53, s. 18 (1) (c), quoted p. 99, *post*.

(*m*) *Pearson v. Holborn Union Assessment Committee*, (1893) 1 Q. B. 389.

vol. I., Part II., pp. 287—292 (Parl. Paper, C. 8765, 1898). There is also given, at p. 284, a list of parishes where local Acts authorise them to rate the owners of empty property (1) at half rates; (2) at one-third rates, with the dates of the Acts authorising such charge. See also proceedings of L. C. C. Assessment Conference, 1894, published by the L. C. C., No. 165, p. 7. Also the L. C. C. Return (No. 243, 1895) of Enactments as to London Rating, containing a summary of the several Acts which have from time to time been passed relating to parishes in the county of London.

See also sect. 16 (2) and the notes thereon, p. 141, *post*.

See also Shaws' "Overseers' Handbook," 4th ed. pp. 122, *et seq.*, and Mayer's "Law of Rating," Art. 28, pp. 72—89.

General Rate.—It may be useful to set out here what has hitherto been the general rate, and the purposes for which a vestry or district board might incur expenses payable out of that rate :—

1. Under the Metropolis Management Acts :—

The lighting of the parish (18 & 19 Vict. c. 120, ss. 90 and 130), where the expenses were not paid out of a separate lighting rate ;

The paving, watering, cleansing, or improving of the parish or parishes under their jurisdiction, and other powers relating to the regulation, government, or concerns of a parish under any local Act (sects. 90, 92) ;

The repair and maintenance of the highways (sect. 96), and the paving (sect. 98) and watering (sect. 116) of streets ;

The improvement and regulation of streets (25 & 26 Vict. c. 102, s. 73), and the extension, widening, alteration, or improvement of streets, roads, or ways, or bridges over canals for the purpose of facilitating passage and traffic, or for any other public purpose (*ibid.*, sects. 72, 73).

2. Under the Public Health (London) Act, 1891 (54 & 55 Vict. c. 76) :—

Provision of hospitals, ambulances, public lavatories, ashpits, public sanitary conveniences, other than privies, and mortuaries ; For the scavenging and cleansing of their district, the suppression and abatement of nuisances, the notification and prevention of infectious disease, and the regulation of underground dwellings and lodging houses, and other matters ;

The sanitary regulation of workshops and bakehouses (sects. 25 and 26).

3. Under the Factory and Workshop Acts to enforce sanitary regu-

lations with respect to factories and workshops, including laundries (54 & 55 Vict. c. 75, s. 1).

4. Under Part II. of the Housing of the Working Classes Act, 1890 :
Proceedings for the closing and demolition of dwelling-houses unfit for human habitation, and for pulling down obstructive buildings in alleys, &c., and carry out schemes for the reconstruction and rearrangement of buildings.

5. Where the Public Libraries Act, 1892, had been adopted for the district under a district board, the expenses of the commissioners of public libraries in providing and maintaining public libraries, &c., were payable by the district board (55 & 56 Vict. c. 53, s. 22) out of the general rate ; otherwise the library rate was raised as part of the poor rate.

6. The expenses of the London School Board were payable out of the general rate of the vestries and district boards as being the "local rate" under Education Act, 1870 (33 & 34 Vict. c. 75), s. 4, and First Schedule.

7. Powers under other Acts, *e.g.*, as to canal boats, adulteration of food, and the pollution of rivers.

In future the general rate will, in addition, include the expenses of sewerage and lighting, by sub-sect. 2, *post*, the poor rate, as to which see the notes, pp. 97—100, *post*, and also the expenses in respect of powers exercised or duties performed by the borough councils in pursuance of this Act.

10—(2.) After the appointed day the general rate and the poor rate shall be assessed, made, and levied together by the borough council as one rate, which shall be termed the general rate, and shall be assessed, made, collected, and levied, as if it were the poor rate, and all enactments applying or referring to the poor rate shall, subject to the provisions of this Act as to audit, be construed as applying or referring also to the general rate.

The Poor Rate.—The purposes for which the poor rate is raised are so numerous as to make the rate in effect a description of omnibus rate. These purposes comprise :—

1. *Expenditure for the Relief of the Poor and other Expenses of Guardians.*

The first and principal purpose for which the poor rate is raised is to provide funds to meet expenditure incurred by the guardians for

the relief of the poor and for other matters. The amounts required by guardians for that purpose are payable out of the proceeds of the poor rate by the overseers, in pursuance of orders issued to them by the guardians.

The guardians incur expenditure in the relief of the poor, both in and out of workhouses, infirmaries, and schools, including the maintenance of pauper lunatics in asylums.

The guardians also defray certain expenses not connected with the relief of the poor, such as the cost of the burial of the dead bodies of poor persons under the direction of the guardians or a duly authorised officer, expenses of assisting the emigration of poor persons, expenses of vaccination, and fees and other charges for the registration of births and deaths.

In the administrative county of London, the expenses of the metropolitan asylum managers (which are defrayed by contributions from the several boards of guardians in the county) include expenditure partly unconnected with the relief of the poor. The managers may provide asylums for the sick, insane, infirm, and casual poor, ships for the training of boys for the sea service, hospitals for persons suffering from fever, small-pox or diphtheria, wharves and landing places for the embarkation of persons removed to or from their hospitals, and ambulances for conveying patients to and from their hospitals.

The managers may have conferred upon them, by regulations as to any formidable epidemic, endemic, or infectious disease made by the Local Government Board under the Public Health (London) Act, 1891, the powers and duties of a sanitary authority for the purpose of such regulations.

2. Expenses of the London County Council.

The L. C. C. sends precepts to the guardians for the county contributions required for defraying their expenses, and the amounts of such contributions are then paid by the overseers out of the poor rate to the guardians on orders received from the latter: County Rates Act, 1852 (15 & 16 Vict. c. 81), s. 26.

3. Expenses of executing the Baths and Wash-houses Acts, 1846 to 1896.

Where the Baths and Wash-houses Acts, 1846 to 1896, have been adopted in a metropolitan parish, the expenses of the commissioners for public baths and wash-houses or other authority executing the Acts, as the case may be, are payable, under an order of the autho-

city, out of the poor rate, or out of a rate levied with and as part of such rate by the overseers: Baths and Wash-houses Act, 1846 (9 & 10 Vict. c. 74), ss. 16, 17; Baths and Wash-houses Act, 1878 (41 & 42 Vict. c. 14), s. 13; Local Government Act, 1894, ss. 7, 33.

4. *Expenses of executing the Public Libraries Acts, 1892, 1893.*

Where the library district is a parish, out of a rate to be raised with and as part of the poor rate, subject, however, to this qualification, that every person assessed to the poor rate in respect of lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be entitled to an allowance of two-thirds of the sum assessed upon him in respect of those lands: 55 & 56 Vict. c. 53, s. 18 (1) (c). But see p. 97, *ante*, par. 5.

5. *Expenses under the Burial Acts.*

The expenses of providing and maintaining a burial ground under the Burial Acts, 1852 to 1885, are in a metropolitan parish payable (upon a certificate of the burial board, or other authority, as the case may be) by the overseers out of the poor rate: Burial Act, 1852 (15 & 16 Vict. c. 85), s. 19; Burial Act, 1855 (18 & 19 Vict. c. 128), s. 11; Local Government Act, 1894, ss. 7, 33.

Where the sums are to be raised in part only of a parish, they are to be levied by an addition to the poor rate so far as the same affects the district in respect of which such payments are required, or by separate rates on such district: 18 & 19 Vict. c. 128, s. 13.

In future the Adoptive Acts will be administered by the borough council, and the expenses will be paid out of the general rate.

6. *Miscellaneous Expenses.*

The principal purposes for which payment is authorised to be made by the overseers out of the poor rate without the order or direction of any other local authority are as follows:—

Salaries of parish officers (if any), viz., of assistant overseer (59 Geo. III. c. 12, s. 7), and of vestry clerk (13 & 14 Vict. c. 57, s. 8);

Preparation by the overseers of lists of electors (6 & 7 Vict. c. 18, s. 57; 31 & 32 Vict. c. 58, s. 31; 51 & 52 Vict. c. 10, s. 8);

Preparation by the overseers of jury lists (7 & 8 Vict. c. 101, s. 60);

Salary of paid parish constable (if any) (35 & 36 Vict. c. 92, s. 4);

Costs of prosecution of keepers of brothels and other disorderly

houses, and payment of rewards to inhabitants who gave notice which led to the conviction of the offenders (25 Geo. II. c. 36, s. 5; 58 Geo. III. c. 70, s. 7; 48 & 49 Vict. c. 69, s. 13);

Relief given by the overseers in cases of sudden and urgent necessity (4 & 5 Will. IV. c. 76, s. 54);

Expenses incurred by overseers in bringing before a justice and conveying to an asylum, pauper lunatics, or lunatics wandering at large, or lunatics ill-treated or neglected by persons having charge of them (53 Vict. c. 5, ss. 13 to 16; 54 & 55 Vict. c. 65, s. 2);

Expenses incurred by overseers in making out valuation lists, or revising or valuing any of the rateable hereditaments of the parish (27 & 28 Vict. c. 39, s. 7);

Rent in urban parishes of vestry rooms (13 & 14 Vict. c. 57, s. 4), and of parochial offices (24 & 25 Vict. c. 125, s. 1), if any, and the repayment of loan and interest charged upon the poor rate where money is borrowed for the purpose of providing a vestry room (13 & 14 Vict. c. 57, s. 5);

Expenses incurred by the overseers in carrying out their duties generally.

7. *Police.*

In a parish within the metropolitan police district, the contribution of the parish towards the expenses of the police force is payable by the overseers out of the poor rate: 10 Geo. IV. c. 44, s. 23.

Making, Collection and Levying of Poor Rate.—It is beyond the scope of this work to deal at any further detail with the law on this subject. Reference should be made to Glen and Macmorran's "Poor Law Statutes."

As if it were the Poor Rate.—A certain uniformity has already been obtained by previous legislation. By the repealed sect. 161, M. M. A., 1855, the overseers were required to collect the general, lighting, and sewers rates in the same manner as the poor rate. Sect. 18 of the M. M. (Amendment) A., 1862, provides that only one summons shall be issued for the recovery of any rates, and the charge for such summons shall not exceed one shilling, and the signature of justices may be affixed by a stamp. By the Poor Rates Recovery Act, 1862 (25 & 26 Vict. c. 82), any number of local rates and taxes, due from the same person, may be included in the same complaint, summons, &c., and no costs shall be allowed in respect of several

complaints, &c., where, in the opinion of the justices, one complaint, &c., would have been sufficient.

Provisions of Act as to Audit.—These provisions are contained in sect. 14, p. 120, *post*.

10—(3.) Where a borough comprises more than one parish, the amount to be raised to meet the expenses of the borough council, or other sums payable as part of those expenses, shall, subject to any provision required for the adjustment of local burdens, be divided between the parishes in proportion to their rateable value.

Borough comprising more than one Parish.—See the note on M. M. A., 1855, s. 159, p. 93, *ante*.

In proportion to Rateable Value.—As the borough councils will be “the overseers” for each parish in a borough (sect. 11 (1), p. 103, *post*), the effect of the sub-section will be, in boroughs comprising more than one parish, that there may be rates of different amounts in the pound in different parishes in the same borough, in regard to the general expenses of a borough council. The general rate in boroughs of more than one parish will be essentially a parish rate, and there will be differences in the rating of such parishes caused by the losses incurred in collection,—from empty houses, composition allowances, excusals, and other irrecoverables.

The difference in the rates amongst parishes in a borough will be increased by sub-sect. (4), *infra*, which provides that where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, the expenses thereunder will be levied as an additional item of the general rate over the parish or other area to which the Act extends.

Adjustment of Local Burdens.—The reason for the retention of the parish as the unit of rating is, perhaps, to be found in the recognition of the unequal conditions of indebtedness amongst parishes and districts, and in the provision that nothing in this Act is to affect the London (Equalisation of Rates) Act, 1894, s. 31 (4), p. 197, *post*. As to church rates, another cause of differentiation, see sect. 23 (1), p. 164, *post*.

As to the fusion of the outstanding loan liabilities of hitherto independent areas grouped into boroughs by the Act, see sect. 16 (1) (d) and 16 (2). See also sect. 86, L. G. A., 1894, incorporated by sect. 33 (2), Lon. G. A., p. 204, *post*.

10—(4.) Where any of the adoptive Acts, or any local or other Act, does not extend to the whole borough, any rate required to meet the expenses incurred under the Act shall, subject to the provisions of any scheme under this Act, be levied together with, and as an additional item of, the general rate over the area to which the Act extends.

Adoptive and other Acts not extending to whole Borough.—See sect. 16 (1) (d), *Lon. G. A.*, *post*, and sect. 4 (2), *ante*.

As to the adoption of any adoptive Act by a council for the rest of their borough, see sect. 4 (4), *ante*.

Special Rates.—For a list of special rates made in parishes in the county of London, see *L. C. C. Return of "Rates made in 1898—99,"* No. 417, pp. 8, 9; remark also the footnotes to the tables at pp. 4 to 7.

Section 11.**OVERSEERS AND COLLECTION OF RATES.**

11. Provisions as to overseers and collection of rates.]—(1.) After the appointed day the council of each borough shall be the overseers of every parish within their borough, and shall appoint such officers as may be required to assist in the transaction of the business, and shall defray the expenses of and incidental to the performance of the duties, of overseers. Provided that the town clerk of each borough shall have the powers and duties and be subject to the liabilities of overseers with respect to the preparation of lists of voters and of jury lists in the borough, and any document required to be signed by overseers may be signed by the town clerk.

Overseers of the Poor.—The persons and bodies who were, at the passing of this Act, overseers of the poor in the metropolis were variously,—overseers; the vestry; governors and directors of the poor; guardians of the poor; overseers, governors and directors of the poor; trustees of the poor; local guardians of the poor; churchwardens, overseers of the poor and trustees; rector, churchwardens and overseers of the poor and vestrymen; local board of health; under treasurer; and steward.

Duties of Overseers.—The more important of the duties devolving upon “the overseers,” which will become part of the powers and duties of the borough councils, comprise:—

Assessment and rating; Rate collection.—It may be stated in general terms that the law as to the valuation of property for the purposes of rating is for the most part contained in the Union Assessment Acts, 1862 to 1880. These Acts are in force in their entirety throughout England and Wales, with the exception of the administrative county of London and ten other places. Parts of them are in force in the administrative county of London, but the general law differs from that in the rest of the country to the extent to which it is modified by the Valuation (Metropolis) Acts.

The authority to tax or rate persons for the relief of the poor springs

from sect. 1 of the Poor Relief Act, 1601 (43 Eliz. c. 2), and the rule for ascertaining the value of the hereditaments assessable to the rate is (for London) laid down by sect. 4 of the Valuation Act, 1869. By this Act the term "hereditament" means "any lands, tenements, hereditaments, and property which are liable to any rate or tax in respect of which the valuation list is by the Act made conclusive;" the term "gross value" means "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay for an hereditament, if the tenant undertook to pay all usual tenant's rates and taxes and tithe commutation rentcharge, if any, and if the landlord undertook to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the hereditament in a state to command that rent"; and the term "rateable value" means "the gross value after deducting therefrom the probable annual average cost of the repairs, insurance, and other expenses as aforesaid": 32 & 33 Vict. c. 67, s. 4.

The whole body of the law of assessment may be said to have arisen from the judicial interpretation of these terms with respect to the varying circumstances of every description of assessable property.

The practical mode of ascertaining the rateable value of hereditaments for the purpose of the poor rate is for the most part determined by the machinery which the Union Assessment Acts and the Valuation (Metropolis) Acts set up.

For further information on this subject reference should be made to Mayer's "Law of Rating," Penfold's "Law of Rating," and Glen and Macmorran's "Poor Law Statutes."

Beerhouses and other licensed premises.—Under the Wine and Beerhouse Acts, 1869 and 1870 (32 & 33 Vict. c. 27, s. 7, 33 & 34 Vict. c. 29, s. 4), every person intending to apply to the justices for a certificate is required, twenty-one days at least before he applies, to give notice in writing of his intention to one of the overseers of the parish in which the house or shop in respect of which his application is to be made is situate, and to the superintendent of police of the district. Under sect. 40 of the Licensing Act, 1872 (35 & 36 Vict. c. 94), notice of an intended transfer of a licence has similarly to be given fourteen days prior to the special sessions appointed by the justices for granting such transfers. These notices will, it is assumed, be addressed after the "appointed day" to the borough council concerned or their town clerk. The requirement that such notices shall be given seems to imply that the borough councils will have a *locus standi* at the hearing of the applications before justices.

Burial of drowned persons, under the Burial of Drowned Persons Acts, 1808 and 1886 (48 Geo. III. c. 75, and 49 & 50 Vict. c. 20). Under sect. 1 of the principal Act, the duty was cast, under penalty (sect. 7), on the churchwardens and overseers of the parish where any dead human body had been cast on the sea shore, to remove within twelve hours and to inter the same in a decent manner in the parish churchyard. The Act of 1886 extended this to bodies cast on shore from any tidal or navigable waters, and to bodies found floating or sunken in any such waters and brought on to the bank or shore thereof. Notice has to be given to a police constable. Persons giving notice to the churchwardens, &c. of the finding of any such body are entitled to a reward not exceeding five shillings. Expenses incurred under the Acts are reimbursable by the county council: see sect. 6 of 1808 Act, and *Reg. v. Kent (Treasurer)*, 22 Q. B. D. 603; 58 L. J. M. C. 71.

Charities.—Overseers as such are sometimes trustees of parochial charities. The L. G. B. have not hitherto, when making orders under sect. 33 of the L. G. A., 1894, conferred upon vestries the power to appoint vestrymen trustees in place of overseer trustees given to parish councils by sub-sect. 2 of sect. 14 of that Act. But now see sect. 23 (4) of this Act, p. 168, *post*.

Disorderly houses, gaming houses, &c.—For the encouragement of the prosecution of these common nuisances the Disorderly Houses Acts, 1751 and 1818 (25 Geo. II. c. 36, ss. 5, 6 and 7, and 58 Geo. III. c. 70, s. 7), were passed. By these Acts, upon two ratepayers (*i.e.*, two inhabitants of a parish “paying scot and bearing lot therein”) giving notice in writing “to any constable (or other peace officer of the like nature where there is no constable) of such parish,” of the existence of any disorderly house, the constable, &c. and the two inhabitants must go before a justice and enter into a recognizance to prosecute. Whereupon such constable or other peace officer shall be allowed all the reasonable expenses of such prosecution, to be paid by the overseers out of the poor rate. And *upon conviction* the overseers shall forthwith pay 10*l.* to each of the two inhabitants. Under the Act of 1818, a copy of the notice to be given to the constable under the former Act was also to be given to the overseers, who might themselves enter into recognizances to prosecute, thereby, apparently, affording an opportunity to the overseers to save the cost of the constable’s prosecution. The proceedings under these Acts were by indictment, but they are equally applicable to proceedings under the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69, s. 13 (2)), which enables summary proceedings to be taken against

brothel-keepers, and provides (sect. 13) that the Acts of Geo. II. and Geo. III. shall be deemed to apply to prosecutions under that Act. Upon this it has been decided that it is optional either to comply with the preliminaries set forth in the 25 Geo. II. c. 36, and 38 Geo. III. c. 70, so as to secure a reward, or to omit those preliminaries and prove the case in the ordinary way under the Summary Jurisdiction Acts, dispensing with such rewards: *Kerwin v. Hines*, 50 J. P. 230. There are, therefore, three courses open to the overseers. They may proceed by indictment under the old statutes, or they may proceed summarily under the Act of 1885 after having taken the preliminary steps under the old statutes, and in either of these cases a reward is paid, or they may proceed summarily under the Act of 1885 independently of the old statutes, and in this case a reward is dispensed with: *Reg. v. Newton and others*, (1892) 1 Q. B. 648.

It is an essential part of the procedure that notice should be given to a constable or other peace officer of the parish. An inspector of metropolitan police is not a parish constable within the meaning of the Acts: *Garland v. Ahrbeck*, 5 T. L. R. 91. It is difficult, therefore, to see how the prescribed proceedings can be taken in a parish for which there is no parish constable. If the two inhabitants themselves prosecute, they are not entitled to the rewards, and the overseers cannot pay them: *Clarke v. Rice*, 1 B. & Ald. 694. There is no provision authorising overseers of their own motion to expend money in watching suspected houses with a view to a prosecution.

In connection with this subject the provisions of the Vagrancy Act, 1898, must be borne in mind: 61 & 62 Vict. c. 39.

Lunatics.—The overseers have also duties imposed upon them by the recent Lunacy Acts, 1890 and 1891 (53 Vict. c. 5, and 54 & 55 Vict. c. 65), with regard to lunatics or alleged lunatics. They are required to apprehend any person (whether pauper or not) wandering at large and deemed to be a lunatic, and take him, or cause him to be taken, before a justice (1890 Act, ss. 15 and 16), and if so directed, see that he is conveyed to a proper institution (*ib.*, ss. 13 and 16; 1891 Act, s. 2(1)). Under sect. 20 of the Act of 1890, if they are satisfied that it is necessary for the public safety, or the welfare of any alleged lunatic, that he should be placed under care and control, they may remove him to the workhouse of the union in which he is. They must also give notice to a justice, being a “judicial authority” under the Acts, of any knowledge that may come to them of any person, not a pauper and not wandering at large, being cruelly treated or neglected, &c.

As the Acts impose similar duties on relieving officers and constables,

overseers, as such, have rarely acted upon the powers conferred, and the borough councils will doubtless also find little occasion to do so.

Parish Offices.—Under the Parochial Offices Act, 1861 (24 & 25 Vict. c. 125), the overseers of urban parishes have power, with the consent of the vestry and the L. G. B., to provide parish offices and to furnish the same. The L. G. B. have, by Order under sect. 33 of the L. G. A., 1894, conferred on certain London local authorities the powers of a parish council under sect. 5 (2) (c) of that Act, thereby transferring existing parochial offices from the overseers to the local authorities. Powers under sect. 6 (1) (c) (iii) of the same Act have also been conferred. Where such a transfer has taken place, the borough councils will succeed to such property under sect. 4 and this section (see p. 103, *ante*).

Relief of the Poor.—Although the primary duty for which the office of overseer was first created (1572, 14 Eliz. c. 5) was almost entirely transferred to boards of guardians by the Poor Law Amendment Act, 1834 (4 & 5 Will. IV. c. 76), sect. 54 of that Act enables any overseer to give relief out of the poor rate, but only “in cases of sudden and urgent necessity, in which cases he is required to give such temporary relief as such case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not.” Overseers may also, under the Consolidated Poor Law Order of 1847 or other Order in force in the union, give a written order for the admittance of paupers into the workhouses in sudden and urgent cases. A justice may also make an order for medical relief in cases of sudden and dangerous illness (4 & 5 Will. IV. c. 76, s. 54). Under the Poor Law Order of 1842, overseers giving relief in kind, or medical relief upon a justice’s order, in cases of urgent necessity or sudden and dangerous illness, must forthwith report the same to the relieving officer or boards of guardians.

This power is, in practice, rarely, if ever, acted upon by overseers; but it is conceivable that a borough council might be disposed to exercise the power in times of “unemployed” distress, or where a strike or other social disturbance may have given rise to any difficulty with the local board of guardians.

Under the Consolidated Order of 1847, if an overseer receives an order under the hands of two justices, directing relief to be given to any aged or infirm person, without such person being required to reside in any workhouse, he must forthwith transmit the same to the relieving officer of the district, to be laid before the guardians at the

next meeting, that they may be enabled, without delay, to give to the relieving officer the necessary directions as to the amount and nature of the relief to be given.

Perambulation of Boundaries.—Another duty devolving upon overseers is that of maintaining the bounds of parishes. The boundaries of parishes in most instances depend upon ancient and immemorial custom, having been originally established according to the particular circumstances of the times or districts. (Still. 243.)

By sect. 60 of the Poor Law Amendment Act, 1844 (7 & 8 Vict. c. 101), the costs, charges and expenses properly incurred by the officers of the parish on the perambulation of the parish, and in setting up and keeping in proper repair the boundary stones of the parish, shall be paid and allowed out of the poor rates of the parish, provided that such perambulations do not arise more than once in every three years. As to evidence of parish boundaries, see notes in Glen's "Poor Law Statutes," vol. I., p. 5; Mackenzie's "Overseers' Handbook," 4th ed., p. 159.

Town Clerk.—The duties attendant upon the compilation of the several voters' lists and the jury lists will henceforth fall upon the town clerk, to whom the personal liabilities and penalties hitherto imposed upon overseers will attach.

It was the duty of the vestry clerk where he was appointed under the Vestries Act, 1850 (13 & 14 Vict. c. 57, s. 7), "to ascertain and make out the list of persons liable to serve on juries, and to cause them to be printed and duly published, and returned to the justices"; also "to give the notices for claims to vote for members of Parliament, and to make out lists of voters, and get the same printed and published, and duly returned according to law, and to attend the Court for revising them, and to prepare, make out, and publish the burgess lists."

Jury Lists.—The clerk of the peace of the county of London issues his precept on or before the 20th July in every year, to the churchwardens and overseers of every parish in the county, requiring them to make out a true list of the names of all men, being natural-born subjects (6 Geo. IV. c. 50) of the Queen, and aliens who have been domiciled in England or Wales for ten years or upwards (33 & 34 Vict. c. 77, s. 8), between the ages of twenty-one and sixty (25 & 26 Vict. c. 107, s. 4, and schedule), residing within the parish and qualified and liable to serve on juries. The precept sets out the qualifications. Briefly stated, the list has to contain the name of every *resident man*

who (a) has 10*l.* clear annual income issuing out of freehold or copyhold property in the same county, or (b) has 20*l.* clear annual income from leaseholds for the absolute term of twenty-one years or longer, or for a life or lives, or (c) is a householder in the parish rated or assessed to the poor rate or to the inhabited house duty in not less than 30*l.*—in other words, a minimum rating qualification of 30*l.* gross and 24*l.* rateable values respectively. The list is set out alphabetically, and persons qualified, in the judgment of the overseers, to serve as “special jurors” are distinguished. These are every resident man legally entitled to be called an esquire, or is a person of higher degree, or a banker or merchant, or who occupies (in London) a private dwelling-house rated or assessed to the poor rate or house duty on a value of not less than 100*l.*

A list of the persons exempt from serving on juries is also furnished by the precept, and their names must not be inserted. The list is contained in the schedule to the Jurors Act, 1870, but has been extended by subsequent Acts.

Printed copies of the list have to be exhibited on the church and chapel doors throughout the parish on the first three Sundays in September, with a notice subjoined stating that all objections to the lists will be heard by the justices at a time and place mentioned (6 Geo. IV. c. 50, s. 9). The original list as signed or a true copy may be perused by any of the inhabitants at any reasonable time during the first three weeks in September without fee. The justices revise and certify the lists at a special petty sessions to be held within the last seven days of September. The incidental expenses are paid out of the poor rate: Poor Law Amendment Act, 1844: 7 & 8 Vict. c. 101, s. 60; see also 6 Geo. IV. c. 50, s. 9.

Registration of Electors.—The town clerk will, in future, have the duty of compiling every year the various lists of persons qualified to vote at parliamentary, county council, municipal and guardians' elections. The law relating to the qualifications and registration of electors ranges from 8 Hen. VI. c. 7 (1429); but the enactments which more particularly affect the overseers are the Representation of the People Acts, 1832, 1867, 1884, the Registration Acts of 1843 to 1885, the Corrupt and Illegal Practices Prevention Acts, County Electors Act, 1888, L. G. Acts, 1888 and 1894, and this Act. As to the issuing of the precept by the town clerk within the meaning of the Registration Acts, see the notes to sect. 4 (1), p. 49, *ante*. The overseers receive on or before 15th April each year from the returning officer (*v.* p. 50)

and clerk to the county council precepts with copies of forms and of existing registers, in accordance with the Registration Order, 1895. These precepts contain particulars for the information and guidance of the overseers and their officers, as regards the nature of the qualifications required of persons for registration for the various franchises, mode of making out the lists, things to be done in order of date, publication and inspection, and attendance before the revising barrister. To assist them in the preparation of the lists, the overseers are to receive quarterly returns of deaths from the registrars of births and deaths (41 & 42 Vict. c. 26, s. 11); and are empowered to require returns to be made to them in April and May of inhabitant occupiers (48 Vict. c. 3, s. 9 (2)), such names being entered in a separate column in the rates books. On or before the 20th June, the ownership portion of the county list is published, with a notice to those who may deem themselves to be qualified to transmit their claims on or before the 20th July. This ownership portion is removed on the 25th July, and republished on the 1st August marked with the overseers' marginal objections, together with the list of ownership claimants, and on the 25th August the list of ownership electors objected to is published.

As regards the borough lists, on the 20th June notices are published giving warning of the liability to the loss of the franchise by non-payment of rates made and allowed during the twelve months next before the 5th January preceding; on the 1st August there are published the following occupiers' lists as compiled by the overseers:—Division I., that is to say a list of persons who are entitled to be registered as parliamentary, county council, and parochial electors; Division II., parliamentary and parochial, otherwise known as the service franchise; Division III., county council and parochial; the Separate List, containing parochial electors only; and the old lodgers' list. On the 25th August lists of claims and objections in respect of all the foregoing lists are published, including the new lodgers' list, and objections to the old lodgers' list. There are also other lists, such as the reserved rights and corrupt and illegal practices lists, the former of which is practically obsolete, and the second rarely, in practice, seen. The revising barristers' courts are held some time between Sept. 8 to Oct. 12, when the overseers and their officers attend, producing lists of voters, the rate books, original notices of claims and objections, notices of withdrawal of objections or revival of objections, and other documents. After hearing and deciding the claims and objections brought forward by election agents and others, the barrister transmits to the returning

officer his corrected and certified copies, from which the new register is compiled and printed.

The accounts of the overseers' expenses are submitted to the barrister in open court; any ratepayer may inspect them and object to any item. The certificate of allowance given by the barrister is final and conclusive. A moiety of the certified amount is paid out of the poor rate, and a moiety out of the county rate.

As to the different qualifications for the franchise, see the notes to sect. 2 (5), pp. 25—36, *ante*.

Liabilities.—For wilful refusal or neglect in connection with the registration of electors, the revising barrister may impose a fine of not less than 1*l.* nor more than 5*l.*: 6 & 7 Vict. c. 18, s. 51; 30 & 31 Vict. c. 102, s. 29; 41 & 42 Vict. c. 26, ss. 10 and 29; 48 & 49 Vict. c. 15, s. 1.

The penalties in regard to jury lists are contained in 33 & 34 Vict. c. 77, s. 13, and 6 Geo. IV. c. 50, s. 45. For inserting or omitting names without reasonable excuse the first-named statute imposes a liability to a penalty for each offence not exceeding 40*s.*; and the latter for general neglect, a penalty not exceeding 10*l.* nor less than 2*l.*

Signature.—By sect. 6 of the Valuation (Metropolis) Act, 1869, the overseers of every parish to which that Act extends were to make and sign a valuation list of their parish in duplicate, within the time mentioned in sect. 42, *ib.*; also by sect. 73, the form of declaration of the poor rate was required to be signed by the churchwardens and overseers. But by sect. 60, where the vestry or the guardians of any parish performed the duties of overseers in this respect, it was required to be signed by the vestry clerk or the clerk of the guardians.

If the rate is not signed it is unenforceable. Notice of a rate made by overseers and published in accordance with the Poor Rate Act, 1743 (17 Geo. II. c. 3), as amended by 7 Will. IV. & 1 Vict. c. 45, s. 2, and 45 & 46 Vict. c. 20, s. 4, need not be signed: *Burnley v. Methley (Overseers)* (1859), 1 E. & E. 789; 28 L. J. M. C. 152; 5 Jur. (N. S.) 914; 7 W. R. 422; *Paynter v. Reg.*, 10 Q. B. 908; 16 L. J. M. C. 136. This would appear to apply to all notices required to be published in the manner in which notice of a rate allowed by justices is required to be published; but it would be safer for all notices, &c. to be signed.

All notices, lists, &c. under the Registration Acts required to be signed by the overseers will in future be signed by the town clerk.

112 OVERSEERS AND COLLECTION OF RATES. [§ 11 (1—2)]

Composition agreements for the rating of owners instead of occupiers in respect of the rating of small tenements under the 32 & 33 Vict. c. 41, ss. 3 or 4, will be signed by the town clerk.

Generally a stamped similitude of a signature is good. See Stroud's "Judicial Dict.," tit. "Sign, Signature." But the L. G. B. have refused to assent to the use of a rubber stamp by a rate-collector in lieu of the written signature on receipts: 60 J. P. 42.

11—(2.) After the appointed day every precept issued by any authority in London for the purpose of obtaining money which is ultimately to be raised out of a rate within a borough, other than a precept sent to guardians by the Local Government Board or by a body containing representatives elected by the guardians, shall be sent to the council at their office, addressed to the council or to the town clerk. Any such precept, if so sent and addressed, shall be deemed to be personally served on the council, and shall be executed by them. "Precept" in this section includes any order, certificate, warrant, or other document of a like character, and the Local Government Board may settle the form of any precept as so defined.

Precepts upon Borough Councils; present mode of levy.—All authorities levy their rates by means of precepts sent down to the "overseers" of the parish, who add the amount of these demands to the amounts required for their own purposes (including the cost of collection and losses from all causes), and collect the whole sum from the ratepayer through one or other of the parish rates as indicated by the governing statute. The technical titles of the rates levied in the county of London,—poor rate, general rate, sewers rate, lighting rate, church rate—have become misleading. Thus the poor rate includes the county rate, police rate, contributions assessed by the asylums board, the sick asylums managers and the school district managers, library rate (*a*), burial board expenses, overseers' expenses, together with the expenditure of the guardians for poor-law purposes proper, whilst the general rate includes the rate made to meet the expenses of the London School Board.

But it will be observed that the precepts of the L. G. B., the Metropolitan Asylums Board, the school district managers and the sick

(*a*) But see p. 97, *ante*.

asylum district managers, will continue to be sent to the guardians, who will include the moneys so called for in their precepts upon the borough councils.

Precepts of Local Government Board.—The Metropolitan Common Poor Fund was established by the Metropolitan Poor Act, 1867 (30 Vict. c. 6), s. 61. The receiver is appointed by the L. G. B. (sect. 62). Under sect. 65, the L. G. B. are empowered to issue “to the guardians of each union or parish” from time to time precepts for the payment of their contribution therein specified, in the manner and within the time therein prescribed, “and the guardians shall accordingly raise the amount of their contribution out of the poor rates of the union or parish.” Guardians are entitled to have credit in part payment of their contribution for the amount which may be repayable to them out of the common poor fund. Sects. 66 and 67 provide for payment of contributions by certain extra-parochial places: see also 20 Vict. c. 19, s. 3; and 32 & 33 Vict. c. 67, s. 59 (5). Sect. 64 makes the valuation list the basis of contribution: see also 32 & 33 Vict. c. 67, s. 45. The application of the common fund is set out in sect. 69, and includes the requirements of the Metropolitan Asylums Board, for all medicine and medical and surgical appliances supplied by guardians to the poor in receipt of relief; fees for registration of births and deaths; vaccination expenses; maintenance of pauper children in district, separate, certificated and licensed schools; relief of destitute persons certified by the auditor under 27 & 28 Vict. c. 116, and provision of temporary wards under Metropolitan Houseless Poor Acts of 1864 and 1865; and salaries. See the Met. Poor Act, 1898, 61 & 62 Vict. c. 45.

A Body containing Representatives elected by the Guardians.—The words constitute a saving for the Metropolitan Asylums Board, and for the five boards of managers of school districts, and the two boards of managers of sick asylum districts within the metropolitan poor law area.

Metropolitan Asylums Board.—Constituted by the Metropolitan Poor Act, 1867, and consists of seventy-two managers, fifty-four being elected triennially by the boards of guardians, and eighteen members nominated by the L. G. B. The Metropolitan Asylums District (which is conterminous with the administrative county with the exception of Penge) was constituted under the order of the Poor Law Board (now L. G. B.) dated May 15th, 1867, amended by Orders of L. G. B. dated Feb. 24th, 1871, and Sept. 3rd, 1886, under the powers conferred by

sects. 5 and 6 of the Metropolitan Poor Act, 1867, as amended by Metropolitan Poor Amendment Act, 1869 (32 & 33 Vict. c. 63), and the Divided Parishes, &c. Act, 1876 (39 & 40 Vict. c. 61), s. 40. The board was originally formed “for the reception and relief of the classes of poor persons chargeable to some union or parish in the said district who may be infected with or suffering from fever, or the disease of small-pox, or may be insane”; but their powers and duties have been considerably extended by the P. H. A., 1891.

The Poor Law School Districts (b) are—

Kensington and Chelsea.

North Surrey (Wandsworth and Clapham and Lewisham Unions).

Central London (City of London and St. Saviour's Unions).

South Metropolitan (Camberwell, Greenwich, St. Olave, Woolwich and Stepney).

West London (Fulham, Hammersmith, St. George, Hanover Square, and Paddington).

The Sick Asylum Districts are—

Central London—comprises the united parishes of St. Giles-in-the-Fields and St. George, Bloomsbury; the Strand Union; and the Westminster Union—was created by Declaration Order of the Poor Law Board, dated May 2nd, 1868, under the Metropolitan Poor Act, 1867. The board of management consists of thirteen members—three for St. Giles and Bloomsbury, five for the Strand, and five for Westminster: see the Central London Sick Asylum District Training of Nurses Order, May 13th, 1873; Rules and Regulations Order, June 10th, 1868; Accounts Order, Nov. 4th, 1870.

Poplar and Stepney—comprises the unions of Stepney and Poplar: Declaration Order, April 23rd, 1868; Rules and Regulations Order, May 16th, 1868.

11—(3.) After the appointed day all the rates collected in a metropolitan borough from any person by the council shall, as far as is practicable, be levied on one demand note, and the demand note

(b) The Forest Gate School District was dissolved by Order of L. G. B., dated Oct. 2, 1897. The training ship *Exmouth* of the Metropolitan Asylums Board is also a district school.

shall be in a form approved by the Local Government Board, and shall state in manner provided in that form—

- (a) the rateable value of the premises in respect of which the rate is levied ; and
- (b) the rate in the pound ; and
- (c) the period for which the rate is made ; and
- (d) the several purposes for which the rate is levied ; and
- (e) the approximate amount in the pound required for each purpose (including, as far as is practicable, the proportionate amount of the estimated costs of and loss in collection) ; and
- (f) any matter required by section two of the London (Equalisation of Rates) Act, 1894, or any other enactment, to be stated in the demand note.

The Demand Note.—The ultimate unit of levy by all precept-issuing authorities is *the parish* ; and the unit of levy of the “overseers” will continue to be each individual hereditament entered in the valuation list for the time being in force.

By sect. 10 (4) any rate required to meet the expenses incurred under any adoptive or local Act in part only of a borough is to be levied with, but as an additional item of, the general rate. The demand note served upon the ratepayers in such particular part will show separately the purpose for which the additional sum is levied. See also sect. 4 (3).

London (Equalisation of Rates) Act, 1894.—This Act is set out, p. 197, *post*. The forms of contribution orders, precepts, demand notes and receipts referred to in sect. 2 are prescribed by L. G. B. Order, No. 475, dated 5th September, 1895 ; and the form of contribution order by L. G. B. Order, No. 737, dated 19th October, 1894.

Section 12.**SEWERS.**

12. *Incidence of sewers rate or its equivalent.*]—As between landlord and tenant every tenant who, if this Act had not been passed, would have been entitled to deduct against or to be repaid by his landlord any sum paid by the tenant on account of the sewers rate, shall in like manner be entitled to deduct against or to be repaid by his landlord such portion of the general rate as represents the sewers rate.

Sewers Rate.—This section merely re-enacts sect. 169 of the M. M. A., 1855, repealed by the Third Schedule, Lon. G. A. The sewers rate being a landlord's tax, in the absence of any agreement binding the tenant to pay such rate, the latter may deduct it from the rent. A covenant to pay all rates includes sewers rate: see *Smith v. Humble*, 15 C. B. 321; *Waller v. Andrews*, 3 M. & W. 312; *Bennett v. Womack*, 7 B. & C. 627; 3 C. & P. 96. See also M. B. W. (Loans) Act, 1869, s. 23, as to rights as between landlord and tenant in relation to any portion of the county rate representing any rate which, for the purpose of any contract or otherwise, is deemed to be a landlord's or tenant's rate.

Section 13.

ASSESSMENT COMMITTEES.

13. *Assessment committees.*—Where the whole of a poor law union is within one borough, the assessment committee shall, notwithstanding anything in section five of the Valuation (Metropolis) Act, 1869, be appointed by the borough council instead of by the board of guardians, and, where the borough comprises the whole of two or more unions, the council shall appoint only one assessment committee for those unions, and where the council appoint the assessment committee the town clerk shall act as the clerk to that committee.

Appointment of Assessment Committee.—The appointment of the assessment committee in London has hitherto been provided for partly by the U. A. Acts, 1862 and 1864 (25 & 26 Vict. c. 103; 27 & 28 Vict. c. 39), which extended originally to England and Wales, including the metropolis, and partly by the V. (M.) A., 1869 (32 & 33 Vict. c. 67), which repeals many sections or parts of sections of both the former Acts so far as they relate to the metropolis. By these Acts for parishes in unions formed under the P. L. (A.) A., 1834 (4 & 5 Will. IV. c. 76), and its amending Acts, the guardians appoint the assessment committee in the same way as in unions outside the county of London. Where in any parish not included in any union there was a vestry elected under the M. M. A., 1855, the appointment of the assessment committee has been governed by the provisions of sect. 5 of the Act of 1869, under which—

- (1) where in any such parish there was a board of guardians having power under any local Act to assess or make the poor rates, the guardians appointed the assessment committee;
- (2) where two of such parishes are united under a local Act for the purpose of making the poor rate, the guardians for the united parishes appoint the committee;

- (3) in cases other than those before mentioned, the vestry have made the appointment.

The body appointing an assessment committee under these provisions are, by sub-sect. 4 of sect. 5 of the Act of 1869, required to hold a meeting and to appoint from among themselves an assessment committee (consisting of not less than six, nor more than twelve, in number) on a day between the 15th and the 29th of April in each year, or some other day fixed by the L. G. B. The time of appointment remains unaffected by the Lon. G. A.

The general effect of sect. 13 of the Lon. G. A. is to place the majority of the borough councils in the same position as a vestry having the power of appointing its own assessment committee.

The duties of the assessment committee are to revise the valuation list made and signed by the overseers. Every valuation list is to be revised in every period of five years, the first of such periods beginning with the 6th of April, 1871, and in each of the first four years of such period a supplemental list shall, if necessary, be made out in the same form as the valuation list. If in the course of any year the value of any hereditament is from any cause increased or reduced in value, a provisional list is to be made which is in operation until the first list (supplemental or other) which is subsequently made comes into force. The Acts contain elaborate provisions governing the procedure of the assessment committee in the discharge of their duties, the rights of persons to object to the values inserted by the overseers, and to appeal from the decisions of the assessment committee. Further detail is, however, beyond the scope of this work; but it may be added that the effect of the section is the transfer of a power from the guardians in certain cases to the borough council.

The borough councils as overseers will prepare the Valuation List quinquennially, the annual Supplemental Valuation List, and the Provisional Valuation Lists as required; so that where the borough council will appoint the assessment committee, any ratepayer aggrieved by the unfairness or incorrectness in the assessment of any property will object from the council to a committee of the council, and that committee will have power to alter any assessment in any list, and will approve all lists made and deposited by its council with them.

There are at present 32 assessment authorities in London, 15 appointed by the vestry, 16 appointed by the guardians, and the L. C. C., who act as an assessment committee in respect of the valuation of Penge under the County Rates Act, 1852.

§ 13] APPOINTMENT OF ASSESSMENT COMMITTEE. 119

The apparent effect of sect. 13 is shown by the following table :—

Cf. First Schedule and App. B.

Boroughs in which Assessment Committee will be appointed by the Borough Council.		Boroughs in which the Committee will be appointed by the Poor-Law Guardians.
Borough and Poor-Law Union conterminous.	Borough comprising the whole of two or more Poor-Law Unions.	
Camberwell. Chelsea. Fulham. Hammersmith. Hampstead. Islington. Kensington. Lambeth. Paddington. St. Marylebone. St. Pancras. Shoreditch. Bethnal Green. <i>(The above are unions of one parish.)</i> Poplar. Bermondsey (<i>St. Olave's Union</i>). Southwark (<i>St. Saviour's Union</i>).	Westminster (St. George's, Westminster, and Strand Unions).	Battersea. Lewisham. Wandsworth. Stoke Newington. Hackney. Deptford. Greenwich. Woolwich. Clerkenwell (<i>East and Central Finsbury</i>). Holborn. Stepney.*

* The Tower of London is in no union, and parts of Whitechapel parish, though in Whitechapel Union, are not in Whitechapel district. Stepney would otherwise go to col. 2. But see p. 152, *post*.

** Chelsea is placed in col. 1 on the assumption that Kensal Town will form part of Chelsea borough; as to this see p. 156. Camberwell and Lambeth have also been placed in col. 1, on the assumption that the detached part of Streatham will be made part of the poor law parish as well as of the borough to which it may be annexed: see p. 156.

Section 14.**AUDIT.**

14. *Audit of accounts.*—After the appointed day the accounts of the council of every metropolitan borough, and of any committee appointed by the council, and of their officers, including the accounts relating to the making, levy, and collection of any rate made by the council, shall be made up and audited in like manner and subject to the same provisions as the accounts of the London County Council, and the enactments relating to the audit of those accounts and to all matters incidental thereto and consequential thereon, including the penal provisions, shall apply accordingly.

Audit of Accounts.—The accounts of the vestries and district boards (other than those relating to the poor rate where a vestry were also the overseers) were formerly audited by elective auditors, and this system has been found to be not altogether satisfactory in practice.

Apart from the difficulty of insuring a satisfactory audit by gentlemen not necessarily possessing any professional qualification, the auditors, even where they disallowed or surcharged any amount, had no means of enforcing their decision. It was therefore to be expected that some change would be made, and the choice lay between the method to be found in the M. C. A., 1882, which provides for an audit by elective auditors with paid professional assistance, and the method adopted for the accounts of county councils; and the latter has been followed.

The keeping and auditing of the accounts of the L. C. C. are governed by sects. 71 and 73, L. G. Act, 1888, which incorporate provisions of the M. C. A., 1882, P. H. A., 1875, and the District Auditors Act, 1879:—

Local Government Act, 1888.

71.—(1.) The accounts of the receipts and expenditure of county councils shall be made up to the end of each local financial year as

(*Local Government Act*, 1888.)

defined by this Act (*a*), and be in the form for the time being prescribed by the Local Government Board.

(2.) The provisions of the Municipal Corporations Act, 1882, with respect to the return to the Local Government Board of the accounts of a council of a borough, and to the accounts of the treasurer of the borough, and to the inspection and abstract thereof (*b*), shall apply to the accounts of a county council, and of the treasurer and officers of such council, and the said provisions respecting the return to the Local Government Board shall extend to the return to that Board of a printed copy of the abstract of the said accounts.

(3.) The accounts of a county council and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections two hundred and forty-seven and two hundred and fifty of the Public Health Act, 1875 (*c*), and those sections and all enactments amending them (*d*) or applying to audit by district auditors (*e*), including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications, and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit. Provided that the First Schedule to the District Auditors Act, 1879 (*f*), shall be modified in manner described in the Second Schedule to this Act.

73.—(1.) After the appointed day, not being more than three years after the passing of this Act, the local financial year shall be the twelve months ending the thirty-first day of March, and the accounts of the receipts and expenditure of every county council shall be made up for that year, but until the appointed day the local financial year shall be the twelve months ending the twenty-fifth day of March, and the said accounts shall be made up for that year.

(*a*) By sect. 73 (1).

(*b*) Sects. 26, 27, 28, 233, *M. C. A.*, set out, pp. 122—3, *post*.

(*c*) Set out, pp. 123—6, *post*.

(*d*) These sections have been amended to extent shown in the text, p. 123, *post*.

(*e*) The District Auditors Act, 1879, is printed, pp. 126 *et seq.*, *post*. Other enactments applying to audit are 7 & 8 Vict. c. 101; 11 & 12 Vict. c. 91; 12 & 13 Vict. c. 103; 29 & 30 Vict. c. 113.

(*f*) The First Schedule, as modified, is printed, p. 129, *post*.

(*Local Government Act, 1888.*)

(2.) All enactments relating to accounts of local authorities, or the audit thereof, or to returns touching their receipts and expenditure, or to meetings, or other matters, shall be modified so far as is necessary for adapting them to the provisions of this section, and the Local Government Board shall from time to time give such orders and make such arrangements as appear to the Board to be necessary or proper for effecting such adaptation, and giving effect to the provisions of this section.

Municipal Corporations Act, 1882.

26. The treasurer shall make up his accounts half-yearly to such dates as the council, with the approval of the Local Government Board, from time to time appoint; and, subject to any such appointment, to the dates in use at the commencement of this Act (*g*).

27.—(1.) The treasurer shall within one month from the date to which he is required to make up his accounts in each half-year, submit them, with the necessary vouchers and papers, to the borough auditors (*h*), and they shall audit them.

(2.) After the audit of the accounts for the second half of each financial year the treasurer shall print a full abstract of his accounts for that year (*i*).

28.—(1.) The town clerk shall make a return to the Local Government Board of the receipts and expenditure of the municipal corporation for each financial year (*k*).

(2.) The return shall be made for the financial year ending on the twenty-fifth of March (*l*), or on such other day as the Local Government Board, on the application of the council, from time to time prescribe.

(3.) The return shall be in such form and contain such particulars as the Local Government Board from time to time direct.

(*g*) But see L. G. A., 1888, s. 73, p. 121, *ante*, altering application of this section; and see note "Financial year," p. 129, *post*.

(*h*) *I.e.*, district auditor appointed by L. G. B.: L. G. A., 1888, s. 71 (3), p. 121, *ante*.

(*i*) See L. G. A., 1888, s. 73, p. 121, *ante*. So much of sects. 198, 199, of the M. M. A., 1865, as requires the accounts in abstract to be printed in the annual report are repealed, and sect. 233 (4), M. C. A., p. 123, *post*, will apply in lieu thereof. As to the town clerk publishing an abstract in a local newspaper, see sect. 247 (10), P. H. A., 1875, pp. 125—6, *post*.

(*k*) The L. G. B. is also to be furnished with a printed copy of the abstract: sect. 71 (2), L. G. A., 1888, p. 121, *ante*.

(*l*) See L. G. A., 1888, s. 73, p. 121, *ante*, and note to M. C. A., 1882, s. 26, *supra*.

(*Municipal Corporations Act, 1882.*)

(4.) The return shall be sent to the Local Government Board within one month (*m*) after the completion of the audit for the second half of each financial year.

(5.) If the town clerk fails to make any return required under this section, he shall for each offence be liable to a fine not exceeding twenty pounds to be recovered by action on behalf of the Crown in the High Court (*n*).

(6.) The Local Government Board shall in each year prepare an abstract of the returns made in pursuance of this section, under general heads, and it shall be laid before both Houses of Parliament.

233. . . . (3.) The treasurer's accounts shall be open to the inspection of the council, and a member of the council may make a copy thereof or take an extract therefrom.

(4.) The abstract of the treasurer's accounts shall be open to the inspection of all the ratepayers of the borough, and copies thereof shall be delivered to a ratepayer on payment of a reasonable price for each copy.

Public Health Act, 1875.

247. Where an urban authority are not the council of a borough, the following regulations with respect to audit shall be observed (namely):—

- (1.) The accounts of the receipts and expenditure under this Act of such authority shall be audited and examined once in every year, as soon as can be after 25th day of March, by the auditor of accounts relating to the relief of the poor (*o*). . . .
- (2.) (Repealed by District Auditors Act, 1879.)
- (3.) Before each audit such authority shall, after receiving from the auditor the requisite appointment, give at least fourteen days' notice of the time and place at which the same will be made, and of the deposit of accounts required by this section, by advertisement in some one or more of the local newspapers circulated in the district; and the production of the newspaper

(*m*) Calendar month: *Interp. Act, 1889, s. 3.* See sect. 230, *M. C. A., 1882.*

(*n*) Note that sect. 14, *Lon. G. A.*, specially mentions the penal provisions: see also sect. 98, *Poor Law Amendment Act, 1834*, set out, p. 128, *post*.

(*o*) Words omitted repealed by *District Auditors Act, 1879 (42 Vict. c. 6)*, Sched. II. By sect. 5 of that Act, the *L. G. B.* is empowered to issue regulations respecting audit.

(*Public Health Act*, 1875.)

containing such notice shall be deemed to be sufficient proof of such notice on any proceeding whatsoever.

- (4.) A copy of the accounts duly made up and balanced, together with all rate books, account books, deeds, contracts, accounts, vouchers and receipts mentioned or referred to in such accounts, shall be deposited in the office of such authority, and be open, during office hours thereat, to the inspection of all persons interested for seven clear days before the audit, and all such persons shall be at liberty to take copies of or extracts from the same without fee or reward; and any officer of such authority duly appointed in that behalf neglecting to make up such accounts and books, or altering such accounts and books, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable to a penalty not exceeding 5*l*.
- (5.) For the purpose of any audit under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, receipts, and other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, receipts, documents or papers, to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same; and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, receipts, documents or papers, or to make or sign (*p*) such declaration, he shall incur for every neglect or refusal a penalty not exceeding 40*s*.; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted on persons guilty of wilful and corrupt perjury.
- (6.) Any ratepayer or owner of property in the district may be present at the audit, and may make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor as they have by law against disallowances.
- (7.) Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising (*q*) the making of the

(*p*) *Reg. v. Burrell*, 9 L. J. Q. B. 337; 12 A. & E. 460.

(*q*) *A.-G. v. Tottenham L. B. H.*, 27 L. T. 440; W. N. (1872) p. 205.

(*Public Health Act, 1875.*)

illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall, in every such case, certify the amount due from such person, and, on application by any party aggrieved, shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made.

- (8.) Any person aggrieved by disallowance made may apply to the Court of the Queen's Bench for a writ of *certiorari* to remove the disallowance into the said Court in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor; and the said Court shall have the same powers with respect to allowances and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors; or in lieu of such application any persons so aggrieved may appeal to the Local Government Board, which Board shall have the same powers in the case of the appeal as it possesses in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors.
- (9.) Every sum certified to be due from any person by an auditor under this Act shall be paid by such person to the treasurer of such authority within fourteen days after the same has been so certified, unless there is an appeal against the decision; and if such sum is not so paid, and there is no such appeal, the auditor shall recover the same from the person against whom the same has been certified to be due by the like process and with the like powers as in the case of sums certified on the audit of the poor rate accounts, and shall be paid by such authority all such costs and expenses, including a reasonable compensation for loss of time incurred by him in such proceedings as are not recovered by him from such person.
- (10.) Within fourteen days after the completion of the audit the auditor shall report on the accounts audited and examined, and shall deliver such report to the clerk of such authority, who shall cause the same to be deposited in their office, and shall publish an abstract of such accounts in some one or more of the local newspapers circulated in the district.

(*Public Health Act*, 1875.)

Where the provisions as to audit of any local Act, constituting a Board of Improvement Commissioners, are repugnant to or inconsistent with those of this Act, the audit of the accounts of such Improvement Commissioners shall be conducted in all respects in accordance with the provisions of this Act.

250. The accounts under this Act of officers or assistants of any local authority who are required to receive moneys or goods on behalf of such authority shall be audited by the auditors or auditor of the accounts of such authority, with the same powers, incidents and consequences as in the case of such last-mentioned accounts.

District Auditors Act, 1879.

2. [After the twenty-fifth day of March one thousand eight hundred and seventy-nine all payments to district auditors out of any local rate shall cease, and] the whole of the salaries or remuneration and of the expenses of district auditors, to such amount as may be sanctioned by the Treasury, shall be paid out of moneys provided by Parliament; and for the purpose of contributing to the amount required for the payment of such salaries, remuneration, and expenses, there shall be charged on every local authority whose accounts are audited by a district auditor a stamp duty for the use of her Majesty, according to the scale contained in the First Schedule to this Act, and such duty shall be levied by a stamp on the certificate of the auditor herein-after mentioned.

3. Where the accounts of the receipts and expenditure of a local authority are audited by a district auditor, the local authority shall prepare and submit to the district auditor at every audit (other than an extraordinary audit held in pursuance of section six of the Poor Law Amendment Act, 1866,) a financial statement in duplicate in the prescribed form (*r*) and containing the prescribed particulars; one of such duplicates shall have the stamp charged under this Act affixed thereon, and the auditor at the conclusion of the audit shall cancel that stamp, and certify on each duplicate, in the prescribed form, the amount in words at length of the expenditure so audited and allowed, and further, that the regulations with respect to such statement have been duly complied with, and that he has ascertained by the audit the correctness of the statement.

He shall forthwith send the duplicate so stamped and certified by him to the Local Government Board; and in such case a return of

(*r*) By the L. G. B. under sect. 71 (1), L. G. A., 1888, p. 120, *ante*.

(*District Auditors Act*, 1879.)

the receipts or expenditure comprised in such statement need not, unless the Local Government Board so require, be sent to the Board in pursuance of the Local Taxation Returns Acts, 1860 and 1877.

4. The Local Government Board may from time to time appoint such number of district auditors as they may, with the sanction of the Treasury, think necessary for the performance of the duties of auditing the accounts which are for the time being by law subject to be audited by district auditors, and may from time to time remove such auditors.

The Board may from time to time assign to district auditors their duties, and the districts in which such auditors respectively are to act, and may from time to time change wholly or in part such duties or districts; and every district so assigned to a district auditor, whether originally or upon any change, shall be deemed to be an audit district within the meaning of any enactment relating to district auditors or their districts, and the auditor to whom any district is assigned shall be deemed to be the district auditor for that district.

The Board may also, with the consent of the Treasury, appoint from time to time a person or persons, either temporarily or otherwise, to assist a district auditor in the performance of his duties, and any person so appointed shall, subject to any exceptions made by the terms of his appointment, have the same powers and duties and be subject to the same obligations as the district auditor whom he is appointed to assist.

The Board, with the like consent, may assign to a person so appointed such salary or remuneration and such sum for his expenses as may seem fit, and such salary, remuneration, and expenses shall be paid out of moneys provided by Parliament.

5. Where any accounts of the receipts and expenditure of a local authority are subject by law to be audited by a district auditor, the Local Government Board may from time to time by order make, and when made revoke and vary, such regulations as seem to the Board necessary or proper respecting the audit of such accounts, including the form (s) of keeping the accounts of the local authority and their officers, the day or days to which the accounts are to be made up, the time within which they are to be examined by the local authority, the mode in which, if it is so prescribed, they are to be certified by the

(e) By L. G. A., 1888, s. 71 (1), the accounts of county councils are to be in the form prescribed by the L. G. B., p. 120, *ante*.

(*District Auditors Act, 1879.*)

local authority or any officer of that authority, the mode of publishing the time and place of holding the audit, the persons by whom such accounts are to be produced for audit, and the mode of conducting the audit, and an order under this section shall be deemed to be an order within the meaning of section ninety-eight of the Poor Law Amendment Act, 1834 (*z*).

6. The duties charged under this Act shall be deemed to be stamp duties under the management of the Commissioners of Inland Revenue, and all the Acts relating to stamp duties, particularly those relating to forgery, fraudulent dies, and other offences in connection with stamp duties, shall apply accordingly; and such duties may, if the commissioners so direct, be denoted by adhesive stamps, to be cancelled by the auditor as provided by this Act.

7. If a local authority fail to comply with the provisions of this Act with respect to a financial statement, such local authority, or if a clerk to the local authority is appointed, that clerk, and if no clerk is appointed, but there is a treasurer or other officer keeping the accounts which should be comprised in such financial statement, that treasurer or other officer shall be liable to a fine not exceeding twenty pounds for each offence, to be recovered by action on behalf of her Majesty in the High Court . . .

8. In this Act,—

The expression “local rate” means the poor rate, the general district rate, and every rate the proceeds of which are applicable to public local purposes, and which is leviable on the basis of a poundage assessment of the value of property, and includes any sum which, though obtained in the first instance by a precept, certificate, or other instrument requiring payment from some authority or officer, is or can be ultimately raised out of a rate as before defined.

The expression “local authority” means any person or body of

(*z*) Sect. 98 of 4 & 5 Will. IV. c. 76, enacts that in case any person shall wilfully neglect or disobey any of the rules, orders, or regulations of the L. G. B., or be guilty of any contempt, such person shall, upon conviction before any two justices, forfeit and pay for the first offence any sum not exceeding 5*l.*, for the second offence any sum not exceeding 20*l.* nor less than 5*l.*, and in the event of such person being convicted a third time, such third and every subsequent offence shall be deemed a misdemeanour, and such offender shall be liable to be indicted for the same offence, and shall, on conviction, pay such fine, not being less than 20*l.*, and suffer such imprisonment, with or without hard labour, as may be awarded against him by the Court by or before which he shall be tried and convicted.

persons who receive and expend any local rate, but does not include overseers of the poor (*u*).

The expression "prescribed" means prescribed from time to time by the Local Government Board.

The expression "Treasury" means the Commissioners of Her Majesty's Treasury.

12. Nothing in this Act shall prevent a district auditor from recovering . . . any expenses . . . which he may . . . incur, in any proceedings which he is authorised or required to take or defend under the statutes in that behalf.

FIRST SCHEDULE.

Scale of Stamp Duties payable by Local Authorities.

Where the total of the expenditure comprised in the financial statement is	The sum shall be
Under 20 <i>l.</i>	5 <i>s.</i>
20 <i>l.</i> and under 50 <i>l.</i>	10 <i>s.</i>
50 <i>l.</i> and under 100 <i>l.</i>	1 <i>l.</i>
100 <i>l.</i> and under 500 <i>l.</i>	2 <i>l.</i>
500 <i>l.</i> and under 1,000 <i>l.</i>	3 <i>l.</i>
1,000 <i>l.</i> and under 2,500 <i>l.</i>	4 <i>l.</i>
2,500 <i>l.</i> and under 5,000 <i>l.</i>	5 <i>l.</i>
5,000 <i>l.</i> and under 10,000 <i>l.</i>	10 <i>l.</i>
10,000 <i>l.</i> and under 20,000 <i>l.</i>	15 <i>l.</i>
20,000 <i>l.</i> and under 50,000 <i>l.</i>	20 <i>l.</i>
50,000 <i>l.</i> and under 100,000 <i>l.</i>	30 <i>l.</i>
100,000 <i>l.</i> and upwards	50 <i>l.</i>
100,000 <i>l.</i> and under 150,000 <i>l.</i>	50 <i>l.</i>
150,000 <i>l.</i> and under 200,000 <i>l.</i>	60 <i>l.</i>
200,000 <i>l.</i> and upwards	15 <i>l.</i> in addition for every 50,000 <i>l.</i> or part thereof (<i>x</i>).

For the purpose of this schedule the expenditure comprised in the financial statement shall be exclusive of any sum paid to another local authority in pursuance of a precept (*u*).

Financial Year.—Sect. 192, M. M. A., 1855, requiring the accounts to be made up annually to the 25th March, is repealed by the Third Schedule, Lon. G. A. The financial year of the L. C. C. is defined by sect. 73, L. G. A., 1888, p. 121, *supra*; it is the twelve months ending 31st March. This will also be the financial year of the borough councils. Sects. 26, 27, and 28 (2) of the M. C. A., 1882,

(*u*) The councils will only be liable to pay stamp duties on their own expenditure for borough purposes.

(*x*) The lines in italics are the modifications made by sect. 71 and Second Schedule, L. G. A., 1888, p. 121, *ante*.

are modified in their application to the metropolis by the provisions of sect. 73, L. G. A., 1888 : see p. 122, *ante*.

Surcharges and Disallowances by District Auditor.—With regard to disallowances and surcharges by the district auditor, it would seem that the auditor is bound to disallow any illegal payment, and has no discretion in the matter: *Barton v. Piggott*, L. R. 10 Q. B. 86; 44 L. J. M. C. 5. As to a colourable or extraordinary addition to mayor's salary, see the cases noted at p. 20, *ante*. Sect. 35 of the P. L. A. A., 1844 (7 & 8 Vict. c. 101), enables any person aggrieved by any allowance, disallowance, or surcharge to apply to the Court of Queen's Bench for a writ of *certiorari* to remove the same into that Court: see Crown Office Rules, 28, 32, 33, 35, 36, 40. Recourse is not usually had to this form of appeal unless an authoritative decision on a point of law is desired. Secondly, under sect. 36 of the same Act, appeal may be made to the L. G. B., who may issue such order therein as they may deem necessary for determining the question. If the Board find that, though the disallowance or surcharge was lawfully made, the subject thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may do so on payment of the costs of the auditor: Poor Law Audit Act (11 & 12 Vict. c. 91), s. 4. The L. G. B. thus possess a useful power to relieve local authorities from errors committed in good faith. Also, by the Local Authorities (Expenses) Act, 1887 (50 & 51 Vict. c. 72), it is provided that "expenses paid by any local authority whose accounts are subject to audit by a district auditor shall not be disallowed by that auditor if they have been sanctioned by the Local Government Board."

As to the recovery of sums certified to be due, see 4 & 5 Will. IV. c. 76, ss. 69 and 101; 7 & 8 Vict. c. 101, s. 32; 12 & 13 Vict. c. 14, ss. 2 and 3; 47 & 48 Vict. c. 43, s. 11. The justices cannot go behind the auditor's decision when an application is made to them for a distress warrant, if the statutable proof of the surcharge be complete: *Reg. v. Linford*, 7 E. & B. 950; *Reg. v. Finnis*, 1 E. & E. 935; 28 L. J. M. C. 301.

Uniformity of Accounts.—Another consequential advantage which will flow from this provision will be uniformity in the keeping of the accounts and in the preparation of the yearly abstracts. The abstracts of accounts printed with the annual reports of the vestries, &c. under repealed sect. 198, M. M. A., 1855, were so diverse in form as to be practically useless for the compilation of reliable statistics regarding metropolitan finance.

Section 15.**COMMISSIONERS' ORDERS AND SCHEMES.**

15. *Appointment of Commissioners and preparation of Orders and schemes.*]—(1.) It shall be lawful for Her Majesty in Council to refer to a Committee of the Privy Council the appointment of Commissioners to prepare such Orders and schemes as are required for carrying this Act into effect, and the committee may settle the orders and schemes so prepared, and may employ such persons as they may deem necessary for the purposes of this Act.

Orders in Council.—Orders in Council are to be made for the following purposes under the sections indicated:—

Sect. 1.—To form (subject to the alterations of area required under other provisions of the Act, and subject also to adjustments of boundaries) each of the areas mentioned in the First Schedule into a separate borough, and to establish and incorporate a council for each of the boroughs so formed: p. 4.

Sect. 2 (2) (3).—To fix the number of councillors for each borough, and for each ward of a borough, and the number and boundaries of wards: pp. 9—10.

Sect. 17 (2).—May divide a parish or place into parts for the purpose of giving effect to sub-sect. (1) of that section, or of constituting a satisfactory area for a borough (see sect. 1): p. 154.

Sect. 18 (1).—Detached parts of parishes are to be annexed to or divided between any of the contiguous boroughs; and either constituted separate parishes, or annexed to or divided between any of the parishes which they adjoin; but this provision is subject to two provisos, which see, p. 155, *post*.

Sect. 18 (2).—For making detached parts of parishes, which, though belonging to other counties, are wholly surrounded by the county of London, part of the county of London; and, under sub-sect. (3), the whole of an urban district with a detached part within London may be added to the county.

Sect. 18 (4).—For alienating detached parts of London parishes, where such parts are wholly surrounded by any other county or counties.

Sect. 20 (1).—To deal with Penge.

Sect. 21.—May detach Kensington Palace from the borough of Westminster and attach it to the borough of Kensington.

Sect. 27 (1).—To give each metropolitan borough an appropriate name, to make provision for the first meetings of the borough councils, and to fix the days, years and times for the retirement of the first aldermen and councillors.

Sect. 27 (2).—For adapting the law regulating the registration of electors with respect to the powers and duties of the town clerk and overseers, and in particular for applying the law relating thereto outside London, to municipal boroughs in London.

Sect. 27 (3).—For accelerating the preparation of the register of electors for the purpose of the first borough elections on the 1st Nov. 1900 (see sect. 3 (4)).

Sect. 33 (2).—For adapting, if necessary, the transitory provisions contained in sects. 85 to 88 of L. G. A., 1894.

Schemes under the Act.—A note of the purposes for which schemes are to be prepared will be found under sect. 16 (1) (a), p. 134, *post*.

Lord President of the Council.—The Lord President himself, under—
Sect. 3 (1)—May, if found necessary, fix some date as soon as practicable after the 1st Nov., 1900, for the first elections, and a corresponding date for the first elections of mayor and aldermen.

Sect. 33 (1)—May appoint some other day, not being more than six months earlier or later than the “appointed day” indicated in that section, for any purpose or provision of the Act.

Provisional Orders of Local Government Board.—Provisional Orders may be made under sect. 5 (3) and (4) for the transfer of powers.

Local Government Board Orders.—The L. G. B. may make orders as follows:—

Sect. 2 (8).—For the triennial retirement of borough councillors.

Sect. 26 (1).—For the alteration of wards.

Committee of Council.—Her Majesty has appointed the Lord President of the Council, the Secretary of State for the Home Department, the President of the Local Government Board, the Right Honourable Lord James of Hereford, the Right Honourable Charles Thomson Ritchie, M.P., the Right Honourable John Lloyd Wharton, M.P., and the Right Honourable Edmond Robert Wodehouse, M.P., or any three

of them, to be a Committee of the Privy Council for the purposes of the Lon. G. A., 1899.

Appointment of Commissioners.—The Committee of the Privy Council have appointed Sir Hugh Owen, G.C.B., Sir Samuel Johnson, and A. T. Lawrence, Esq., Q.C., to be Commissioners for the purposes of the Act, and have also appointed Claud Schuster, Esq., barrister-at-law, and Charles Dalrymple Hay, Esq., of the Privy Council Office, to be secretary and assistant-secretary respectively to the Commissioners.

15—(2.) Before any Order in Council forming an area into a borough is made under this Act, the draft thereof shall be laid before each House of Parliament for a period of not less than thirty days during the session of Parliament, and if either of those Houses before the expiration of those thirty days presents an address to Her Majesty against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft Order.

15—(3.) The Commissioners shall for the execution of their duties under this Act have the like powers as inspectors of the Local Government Board.

Powers of Inspectors of L. G. B.—As to the powers of the inspectors of the L. G. B., see Poor Law Board Act, 1847 (10 & 11 Vict. c. 109), ss. 19 to 22. They may summon witnesses for the purpose of being examined before them; call for books and documents not relating to or involving any question of title to any lands not being the property of any parish or union; and may administer oaths or may require the party examined to make and subscribe a declaration of the truth of the matter respecting which the witness is examined; but “no person shall be required in obedience to any such summons to go or travel more than ten miles from his place of abode”: sect. 21. See also sects. 11 and 26; also 4 & 5 Will. IV. c. 76, s. 12. See sect. 296, P. H. A., 1875, p. 182, *post*.

15—(4.) Any expenses incurred by the Committee under this Act shall, to the amount certified by the Treasury, be paid by the London County Council out of the county fund.

Section 16.

PROVISIONS TO BE MADE BY SCHEME.

16. *Provisions to be made by scheme.*—(1.) A scheme under this Act may make provision—

- (a) for any matters which under this Act are to be regulated by scheme; and

Schemes under the Act.—In addition to the purposes for which schemes are to be made under this section, are to be added :—

Sect. 4 (2).—For abolishing existing boards of commissioners of baths and libraries, and burial boards, and transferring their powers, &c., to the borough councils.

Sect. 4 (3).—In reference to any power or duty arising from any general or local Act, conferring powers in relation to some particular parish or district or part of a parish or district, a scheme may make provision for any such power or duty being performed either throughout or in a limited part or ceasing to be performed.

Sect. 10.—For the discontinuance of certain separate rates for separate purposes, and for all the expenses of a borough council being paid out of one consolidated rate, to be called the “general rate,” but with savings in respect of hereditaments wholly or partially exempt from any rate.

Sect. 19.—For bringing Woolwich under the general law applying to metropolitan boroughs.

Sect. 20 (2).—For making the necessary adjustments, &c., consequential upon the severance of Penge from the metropolis, should that course be determined upon under sect. 20 (1).

Sect. 23 (1), (2).—For vesting the powers, &c., of vestries in relation to affairs of the church, &c., in the inhabitants, and church property in the incumbent or churchwardens; and providing also for the collection of rectors’ and church rates where there are such; and in reference to public buildings erected in churchyards.

Sect. 23 (4).—For substituting nominees of the borough council for overseers as trustees of any charity.

§ 16 (1) (A—C)] PROVISIONS TO BE MADE BY SCHEME. 135

Sect. 30 (4).—For carrying sect. 30, which relates to existing officers, into effect : p. 194.

Preparation of Schemes.—As to who are to prepare the schemes, see sect. 15 (1), p. 131.

16 (1)—(b) for any of the purposes, except police, for which a scheme may be made under Part Eleven of the Municipal Corporations Act, 1882, so far as those purposes are consistent with this Act ; and

The purposes for which a scheme may be made under Part XI. of the M. C. A., 1882, are set out, p. 142 *et seq.*, *post.*

16 (1)—(c) for anything which may be done with respect to a parish by an order under section fifty-seven of the Local Government Act, 1888, or may be done under section 33 of the Local Government Act, 1894, so, however, that parishes in different unions shall not be united except with the approval of the Local Government Board ; and

Local Government Act, 1888.—The incorporated section is as follows (for “ county council ” read “ the committee of council ”) :—

57.—(1.) Whenever a county council is satisfied that a *prima facie* case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things ; that is to say—

- (a) the alteration or definition of the boundary thereof ;
- (b) the division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish ;
- (c) the conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts ;
- (d) the division of an urban district into wards ; and
- (e) the alteration of the number of wards, or of the boundaries of

(*Local Government Act, 1888.*)

any ward, or of the number of members of any district council, or of the apportionment of such members among the wards, the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government department as may be prescribed, and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner (*a*), and otherwise as the county council think fit, and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the county council.

(3.) In any other case the order shall be submitted to the Local Government Board; and if within *three months* (*b*) after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

(4.) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order (*c*).

(5.) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

(6.) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament (*d*).

(*a*) See the prescribed regulations, dated 14th September, 1889, in 19th Annual Report of L. G. B., 1889—1890.

(*c*) See L. G. A., 1894, s. 42.

(*b*) Six weeks: L. G. A., 1894, s. 41.

(*d*) See also L. G. A., 1888, s. 59 (6).

(*Local Government Act, 1888.*)

(7.) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

Division of Boroughs into Wards.—The first divisions of boroughs into wards, and the apportionment of councillors, are to be fixed by Order in Council under sect. 2 (2), *Lon. G. A.*, p. 9, *ante*. The provisions as to wards would not appear to be applicable, having regard to sect. 26, p. 174, *post*, which confers on the L. G. B. the powers to make subsequent alterations of the number or boundaries of wards. This power is one of the powers of which the L. C. C. are deprived.

Orders made by L. G. B.—For an account of the orders which have been made by the L. G. B. applying various provisions of the *L. G. A.* under sect. 33, see Annual Reports of L. G. B., 1895—1898, about p. xl.

Local Government Act, 1894.—A scheme under the *Lon. G. A.* may also make provision for anything which may be done under sect. 33, *L. G. A.*, 1894. For “L. G. B.” read “the committee of council” :—

33.—(1.) The Local Government Board may, on the application of the council of any municipal borough, including a county borough, or of any other urban district, make an order conferring on that council or some other representative body within the borough or district all or any of the following matters, namely, the appointment of overseers and assistant overseers, the revocation of appointment of assistant overseers, any powers, duties, or liabilities of overseers, and any powers, duties, or liabilities of a parish council, and applying with the necessary modifications the provisions of this Act with reference thereto.

(2.) Where it appears to the Local Government Board that, by reason of the circumstances connected with any parish in a municipal borough (including a county borough) or other urban district divided into wards, or with the parochial charities of that parish, the parish will not, if the majority of the body of trustees administering the charity (e) are appointed by the council of the borough or district, be properly represented on that body, they may, by their order, provide that such of those trustees as are appointed by the council, or some of them, shall be appointed on the nomination of the councillors elected

(e) See also sect. 21, *Lon. G. A.*

(*Local Government Act, 1894.*)

for the ward or wards comprising such parish or any part of the parish.

(3.) Any order under this section may provide for its operation extending either to the whole or to specified parts of the area of the borough or urban district, and may make such provisions as seem necessary for carrying the order into effect (*f*).

(4.) The order shall not alter the incidence of any rate (*g*), and shall make such provisions as may seem necessary and just for the preservation of the existing interests of paid officers (*h*).

(5.) An order under this section may also be made on the application of any representative body within a borough or district.

(6.) The provisions of this section respecting councils of urban districts shall apply to the administrative county of London in like manner as if the district of each sanitary authority in that county were an urban district, and the sanitary authority were the council of that district.

(7.) The Local Government Board shall consult the Charity Commissioners before making any order under this section with respect to any charity (*i*).

Powers of Parish Councils.—The only part of sect. 33 (1) which appears to remain in point is that with regard to the application of the powers, duties or liabilities of a parish council to a metropolitan borough council, as by sect. 11 of the Lon. G. A., p. 103, *ante*, the council of each borough are to be the overseers of every parish within the borough.

Representative Body.—Note with reference to sub-sects. 1 and 5, *supra*, that the only representative bodies within a borough will in future apparently be the borough council and the guardians.

Incidence of any Rate.—As to incidence of any rate, see the following sub-section, p. 139, *post*.

Paid Officers.—See sect. 30, p. 186, *post*.

Charities.—See sect. 23, pp. 168—170, *post*.

(*f*) Compare proviso to sect. 4 (3), Lon. G. A., p. 58.

(*g*) See also sect. 16 (1) (d), Lon. G. A., p. 139.

(*h*) See also sect. 30, Lon. G. A.

(*i*) See also sect. 23, Lon. G. A.

- 16 (1)—(d) for such adjustments as may be required for carrying into effect any of the provisions of this Act or for preventing any injustice with respect to the incidence of any rate or the discharge of any liability or otherwise, and in particular for such adjustments as may be required for the efficient maintenance of any libraries, baths, or wash-houses, which have been maintained under the provisions of any of the adoptive Acts; and

Incidence of any Rate.—See also incorporated sect. 33 (4), L. G. A., 1894, p. 138, *ante*. As to London (Equalization of Rates) Act, 1894, see p. 197, *post*.

Adoptive Acts.—Defined, sect. 34, Lon. G. A., p. 207, *post*.

- 16 (1)—(e) for preserving, so far as may appear necessary or expedient, any right, power, exemption, or immunity heretofore exercised or enjoyed in respect of property belonging to or occupied by the Crown or any Government department; and

Government Property.—Property in the occupation of the Crown, or occupied for the purposes of the public government of the country, is not, under the general law, liable to be rated, but since 1874 it has been the settled practice of the Treasury to make voluntary “contributions in lieu of rates” for all Government property which is not rateable. The estimated rateable value or “basis” on which the contributions are made is fixed by the Treasury Valuer. Some Acts under which Government property is held make special provisions as to the payment of poor rates in respect of such property. All lands, property, and undertakings purchased or acquired by the Postmaster-General under the Telegraph Act, 1868 (31 & 32 Vict. c. 110), s. 22, are assessable and rateable in respect to local, municipal, and parochial rates, &c. at sums not exceeding the rateable value at which such land, property, &c. were properly assessed or assessable at the time of such purchase or acquisition. Similarly, under the Post Office Extension Act, 1865 (28 & 29 Vict. c. 87), s. 12; under the Defence Act, 1860 (23 & 24 Vict. c. 112), s. 33, and Military Forces Localisation Act, 1872 (35 & 36 Vict. c. 68), s. 11, in respect of lands vested in the Secretary of War; under the Courts of Justice Concentration (Site) Act, 1865 (28 & 29 Vict. c. 49), s. 5; and as to the Custom

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House, see sects. 4 and 5 of the 52 Geo. III. c. 49, whereunder certain fixed sums are payable annually in the place of parochial, &c. rates. The premises are by sect. 5 declared to be deemed to be exempt from payment of all rates, &c. See also *Reg. v. Postmaster-General* (1873), 28 L. T. (N. S.) 337; 21 W. R. 459; *St. Gabriel (Overseers) v. Williams* (1885), 16 Q. B. D. 649; 54 L. T. (N. S.) 270; 50 J. P. 533.

See L. C. C. "Return of Government Property" for the year 1899 in parishes and unions in the administrative county of London, showing the valuation (rateable) placed upon such property for the purpose of assessing the contribution in lieu of rates to be paid by the Government: No. 8,679, March, 1899. See p. 93, *ante*.

See Treasury Minute on contributions to local rates in respect of property in the occupation of Her Majesty's Government, June 25, 1874: Parly. Paper, 234; also L. C. C. Statistics, Vol. IV. p. 578.

Sect. 30 of the Union Assessment Committee Act, 1862 (25 & 26 Vict. c. 103), directs that if any parish comprised in any union receives any sum as a contribution in aid of the poor rate for or in respect of Government property and used for public purposes, the annual value of the property according to the estimate (if any) of the value on which the sum received is computed, or, if there be no estimate, then the annual value of the property, estimated in the mode provided by the 6 & 7 Will. IV. c. 96, must be included by the overseers in the valuation list and be added to the annual rateable value of the property in the parish, for the purpose of computing the amount of contribution to the common fund for the several parishes in the union.

16 (1)—(f) for making such alterations in the boundaries of the electoral divisions for the purpose of school board elections as may be rendered necessary by any alteration in the area of the county of London; and

See notes to sect. 31 (5), p. 200, *post*.

16 (1)—(g) for repealing or modifying any local Act other than the London Building Act, 1894; and

Local Act.—Defined, sect. 34, p. 208, *post*.

This would include power to modify any of the numerous L. C. C.

General Powers and other local Acts obtained by them, other than the Building Act.

See the L. C. C. "Return of the several Acts of Parliament which have from time to time been passed relating to parishes in the county of London," May, 1895, No. 243. This return contains 111 foolscap pages of the titles alone of local Acts, numbering some 2,000 or more; and 298 pages setting out the rating clauses in such Acts.

16 (1)—(h) for carrying into effect this Act or any Order in Council made thereunder; and may contain any incidental, consequential, or supplemental provisions, which may appear to be necessary or proper for the purposes of the scheme.

16—(2) In making adjustments by a scheme under this section, regard shall be had to any composition, contribution, or exemption, whether statutory or otherwise, which has heretofore existed in regard to any portion of any area dealt with under the scheme.

Exemptions.—As to the continuance, extension, or extinction of any local power, see sect. 4 (3), p. 58, *ante*.

As to the protection of interests of owners and occupiers in regard to exemptions from paying rates or being rated, see sect. 10 (1), p. 92, *ante*.

As to preventing injustice with regard to the incidence of any rate or the discharge of any liability, see sect. 16 (1) (d), p. 139, *ante*.

It would seem that this sub-section contemplates cases of exemptions as regards areas and portions of areas, as, for example, where there is a marsh rate for part of an area from which the remainder is free; while sect. 10 (1), p. 92, *ante*, makes provision as regards individual hereditaments.

16—(3.) The provisions of the Municipal Corporations Act, 1882, as amended by the School Boards Act, 1885, with respect to a scheme under Part Eleven of the first-mentioned Act, shall apply in the case of any scheme under this Act with the necessary modifications, and any governors or trustees of the poor or other similar body under a local Act shall be deemed, but the London County Council shall not be deemed, to be a local authority within

the meaning of those provisions. There shall also be deemed to be local authorities within the meaning of the said provisions:—

(Carried on p. 147, *post.*)

Municipal Corporations Act, 1882, Part XI. :—

213.—(1.) Where a petition for a charter is referred to the Committee of Council, and it is proposed by the charter to extend the Municipal Corporations Acts to the municipal borough to be created by the charter, the Committee of Council may settle a scheme for the adjustment of the powers, rights, privileges, franchises, duties, property and liabilities of any then existing local authority whose district comprises the whole or part of the area of that borough, either with or without any adjoining or other place, and also of any officer of that authority.

(2.) The scheme, so far as it appears to the Committee of Council to be necessary or proper for carrying into effect the said adjustment as regards any local authority existing at the time of the making of the scheme, may contain provisions for the continuance of that authority, or for the abolition, total or partial, of that authority, or for the creation of another authority or authorities, and the alteration of the district of the existing local authority, and the union or other relation of the existing local authority, and the authority or authorities so created, and for the continuance, modification, transfer, vesting and extension to the whole of the borough of all or any of the powers, rights, privileges, franchises, duties, property and liabilities of the existing local authority, and may contain such provisions as appear to the Committee of Council to be necessary or proper for fully carrying into effect any such adjustment and provisions as aforesaid.

(3.) The scheme, when settled by the Committee of Council, shall be published in the *London Gazette*, and shall not be of any effect unless confirmed as hereinafter mentioned (*j*).

(4.) Where, within one month after the publication of the scheme in the *London Gazette*, a petition against it by any local authority affected thereby, or by not less than one-twentieth of the owners and ratepayers of the borough (such twentieth to be one-twentieth in number of the owners and ratepayers of the borough taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the borough and the owners and ratepayers in all cases to include women not under coverture), has been received by the

(*j*) As to publication of scheme, see sect. 16 (4), p. 151, *post.*

(*Municipal Corporations Act, 1882.*)

Committee of Council, and is not withdrawn, the scheme shall require the confirmation of Parliament, and the Committee of Council may, if they think fit, submit it to Parliament for confirmation; but otherwise, at any time after the expiration of the said month, or after the withdrawal of any petition that has been presented, the Committee of Council may, if they think fit, submit the scheme for confirmation, either to Parliament or to her Majesty in Council, and in the latter case it shall be lawful for her Majesty to confirm the scheme by Order in Council.

(5.) A scheme, when confirmed by Parliament or by Order in Council, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the scheme were part of this Act.

(6.) A local authority for the purposes of this part means a sanitary authority (not being the mayor, aldermen and burgesses of a borough subject to the Municipal Corporations Acts), also the corporation of a borough not subject to the Municipal Corporations Acts, a burial board, trustees, commissioners or other persons who, as a public body and not for their own profit, act under any Act for paving, lighting, supplying with water or gas, cleansing, watching, regulating or improving any town or place, or for providing or maintaining a cemetery or market in or for any town or place, and any commissioners, trustees, or other persons (not being justices) maintaining any police force, and any other authority not in this section excepted, [*and not being a school board,*] (k) and having powers of local government and of rating for public purposes.

(7.) The district of a local authority for the purposes of this section means the area within which such authority can exercise any powers or rights.

214.—(1.) A scheme shall, before being settled by the Committee of Council, be referred for consideration to the Secretary of State and the Local Government Board, and, if and as far as it is intended to affect any authority which is a harbour authority within the meaning of the Harbours and Passing Tolls, &c. Act, 1861, to the Board of Trade.

(k) "And not being a school board" repealed by School Boards Act, 1885. See saving for London School Board, sect. 31 (5), Lon. G. A., p. 200, *post*.

(*Municipal Corporations Act, 1882.*)

(2.) A scheme shall in every case provide for placing the new borough within the jurisdiction of the council as the sanitary authority.

(3.) The regulations contained in the Seventh Schedule with respect to the scheme shall be observed (*l*).

(4.) If the Committee of Council are satisfied that a local authority or other petitioners have properly promoted or properly opposed a scheme before them, and that for special reasons it is right that the reasonable costs incurred by the authority or other petitioners in such promotion or opposition should be paid as expenses properly incurred by the local authority in the execution of their duties, the Committee of Council may order those costs to be so paid, and they shall be paid accordingly.

218.—(1.) Where a scheme for a borough has been confirmed under this part, or any former enactment, and the municipal corporation of the borough or one-twentieth of the owners and ratepayers of the borough (estimated as in this part mentioned), or a local authority affected by the scheme, petition the Queen for an amending scheme, the petition shall be referred to a Committee of the Lords of her Majesty's Privy Council (included in the term the Committee of Council in this part), and shall be proceeded on, and this part shall apply thereto, as nearly as may be, as if the same were a petition for a charter extending the Municipal Corporations Acts to a municipal borough to be incorporated.

(2.) The Committee of Council, if they think fit to submit the amending scheme for confirmation, shall submit the same to Parliament, or they may submit the same to her Majesty in Council, if the original scheme was confirmed by Order in Council; and in the latter case it shall be lawful for her Majesty to confirm the amending scheme by Order in Council.

(3.) An amending scheme, when confirmed by Parliament, or by Order in Council, as the case may require, shall have full operation, with, in the former case, such modifications, if any, as are made therein by Parliament, as if the amending scheme were part of this Act.

(*l*) As to publication, see sub-sect. 4, p. 151, *post*, providing for notification in the *London Gazette*, &c., in substitution for the publication required by the schedule.

(*Municipal Corporations Act*, 1882.)

THE SEVENTH SCHEDULE (*m*).

Procedure for Scheme on Grant of New Charter.

1. The Committee of Council may, if they think fit, require the draft of a proposed scheme to be submitted to them, either together with the petition for a charter, or at any subsequent period.

2. The draft of a proposed scheme shall be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

3. Before settling the scheme the Committee of Council shall consider any objections which may be made thereto by any local authority or persons affected thereby.

4. The scheme, when settled, shall, besides being published in the *London Gazette*, be published by advertisement, or placards, or handbills, or otherwise, as the Committee of Council think best calculated for giving notice thereof to all persons interested.

5. Where a scheme is submitted to Parliament for confirmation, the Committee of Council may introduce a Bill for the confirmation of the scheme, which Bill shall be a Public Bill.

6. Before such Bill is introduced into Parliament the Committee of Council may alter the scheme in such manner as they think proper.

7. If while the Bill confirming a scheme is pending in either House of Parliament a petition is presented against the scheme, the Bill, so far as it relates to such scheme, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of a Private Bill.

8. A scheme shall come into operation at the date of its confirmation or any later date mentioned in the scheme.

9. The confirmation of a scheme shall be conclusive evidence that all the requirements of this Act with respect to proceedings required to be taken previously to the making of the scheme have been complied with, and that the scheme has been duly made, and is within the powers of this Act.

(*m*) This schedule must be read subject to the fourth sub-section of this section, p. 151, *post*, which substitutes notification in the *London Gazette* and in such other manner as the Committee of Council may direct for the publication required by the schedule.

School Boards Act, 1885.

1. . . .

(1.) The words “and not being a school board” in sub-section six of section two hundred and thirteen of the Municipal Corporations Act are hereby repealed.

A scheme under that section if affecting a school board—

- (a) shall before being settled by the Committee of Council be referred to the consideration of the Education Department; and
- (b) shall not place the new borough under more than one school board; and
- (c) may provide for the continuance of any bye-laws in force at the date of the scheme.

(2.) Where within seven years before the passing of this Act a charter has extended the Municipal Corporations Act, 1882, or the Acts thereby consolidated to the municipal borough created by the charter, any scheme relating to a school board which might have been made under the said Acts if this Act had passed at the date of the said charter may be made after the passing of this Act, and Part Eleven of the Municipal Corporations Act, 1882, shall apply accordingly: Provided that—

- (a) such scheme may be made on the petition either of the council of the said borough or of the persons who composed the school board, or any of them; and
- (b) the council of the borough may petition against such scheme in accordance with sub-section four of section two hundred and thirteen of the Municipal Corporations Act, 1882; and
- (c) any such scheme may validate any acts done by the Education Department or the school board or the council of the borough or any justice since the date of the charter.

(3.) This section shall be in addition to and not in derogation of any powers in relation to school boards for the time being vested in the Committee of the Lords of the Privy Council on Education (who are in this section referred to as the Education Department).

School Board for London.—By sect. 31 (5), p. 200, *post*, nothing in this Act is to affect the rights of the School Board for London over the administrative county. See also sect. 16 (1) (f), p. 140, *ante*.

Local Authority.—This term, under sub-sect. 6 of sect. 213 of M. C. A., 1882, would include boards of guardians or overseers of the poor acting as sanitary authorities for places in Sched. C. to the

M. M. A., 1855. For definition of sanitary authority in this regard, see sect. 99 (1) (c) of Public Health (London) Act, 1891.

As to "any governors or trustees of the poor or other similar body under a local Act," see the L. C. C. Return of local Acts which have been from time to time passed relating to parishes in the county of London; published May, 1895, No. 243.

- 16 (3)—(a) the mayor, commonalty, and citizens, and the Court of Aldermen of the City of London, so far as relates to any powers exerciseable by them or by officers appointed by them respectively within the ancient borough of Southwark; and

Borough of Southwark.—The borough of Southwark is for certain purposes subject to the jurisdiction of the Lord Mayor, Aldermen, and Common Council. Southwark was anciently a distinct corporation, governed by its own bailiff until the year 1327, when the City of London obtained a grant, by which the Lord Mayor was constituted Bailiff of Southwark, and empowered to preside over it by his deputy. Some time after this the inhabitants recovered their former privileges, which they enjoyed until Edward VI., in 1550, granted Southwark to the City of London for the sum of 647*l.* 2*s.* 1*d.* Shortly after the passing of this patent, in consideration of the City paying to the Crown an additional sum of 500 marks, Southwark was made one of the City wards, and named Bridge Ward Without. For this ward there is no election of alderman, but the senior alderman ("the Father of the City") who has just passed the chair may remove to this ward. The Borough Liberty was under the jurisdiction of the Lord Mayor, who by his steward or bailiff held the court of record; and the Clink Liberty (part of the parish of St. Saviour, otherwise St. Mary Overy), which was under the jurisdiction of the Bishop of Winchester, who, besides a court leet, kept a court of record on the bankside near St. Saviour's Church. See Tanner's *Not. Mon.*; *Magna Brit.* vol. V., p. 336; *Carlisle's Topog. Dict.*; *Maitland's London*, vol. II., p. 761; *Birch's "Historical Charters of City of London,"* pp. 59, 110, 184, 269.

The Lord Mayor and all aldermen who have passed the chair are justices of Southwark.

The Court of Aldermen of the City appoints the High Steward of Southwark, who is the sole judge of the Court of the borough of Southwark, otherwise the "Court of Record of the Liberty of the mayor and commonalty and citizens of the City of London, of their Town and Borough of Southwark." It has practically fallen into desuetude. The Recorder holds the appointment of High Steward, whose duties are to hold the courts leet, and to charge the leet juries, &c. as steward of the corporation, the lord of the manor of Southwark.

The officiating coroner for the City (*n*), elected by the Court of Common Council, is also coroner for Southwark under charter of Edward VI., and his jurisdiction includes, besides the Temples, &c., the Thames opposite both the City and Southwark. He receives from the L. C. C. under the L. G. A., 1888, an annual sum of 135*l.* towards his salary for the discharge of his duties as coroner for Southwark, being the amount previously paid by the Surrey justices. See also sect. 31, *Coroners Act*, 1887 (50 & 51 Vict. c. 71).

The Corporation of the City is lord of three manors within the borough—the Guildable Manor (the ancient town); the King's Manor, formerly belonging to the Archbishop of Canterbury; and the Great Liberty Manor, formerly belonging to

(*n*) The Lord Mayor is, by custom, the coroner for London.

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the Abbey of Bermondsey. By the Reform Act there were added to the old parliamentary borough the Liberty of the Clink and the parishes of Christchurch, Bermondsey, and Rotherhithe: 2 & 3 Will. IV. c. 64, Sched. O., 33. The present secondary of the City is also high bailiff and returning officer of Southwark, and as such receives and executes all writs for the election of Members of Parliament, and appoints deputy returning officers, &c. for the three divisions of the borough. He issues his precepts to the overseers of the several parishes within the borough, receives the lists as they leave the revising barrister's court, and compiles the registers of voters. The high bailiff prepares the jury lists, summons jurors, and arranges for holding special sessions in all cases of compensation or assessments of property within the borough.

16 (3)—(b) the Dean and Chapter of the Collegiate Church of St. Peter, Westminster, so far as relates to any powers of local government exerciseable by them or their officers within the borough of Westminster, and the Court of Burgesses of the ancient city of Westminster.

The Court of Burgesses; Dean and Chapter.—The Court of Burgesses of the ancient city of Westminster was constituted by the local Act, 27 Eliz. c. 31, 1585 (in Ruffhead, c. 17, private), and continued by Acts of the 31 Eliz. c. 10, 35 Eliz. c. 7, 39 Eliz. c. 18, 43 Eliz. c. 9, 1 Jac. I. c. 25, 21 Jac. I. c. 28, and 3 Car. I. c. 4, to the end of the Parliament next ensuing the passing of each of those Acts respectively, and was further continued by an Act of the 17 Car. I. intituled "An Act for granting Two Subsidies for the further Relief of His Majesty's Army," until some other Act of Parliament should be made touching the continuance or discontinuance thereof.

The City was recognised and other powers conferred upon the Court of Burgesses by the local Act, 29 Geo. II. c. xxv., 1756, followed by a number of other statutes, for which see volume of local Acts, and L. C. C. Return, No. 243, pp. 29—35.

For some account of the Court of Burgesses, and as to the powers of the Dean and Chapter and of the Court, see Terry's "Greater Westminster."

As to how a scheme may affect such powers, see M. C. A., 1882, s. 213, p. 142, *ante*.

Among the powers of the Dean and Chapter is that of appointing the coroner for the city and liberties of Westminster. This power has not been transferred to the L. C. C. by the L. G. A., 1888, as that Act did not affect franchise coronerships (as this is), but only county coroners who, before 1888, were elected by the freeholders: *London County*

Council, Ex parte, (1892) 1 Q. B. 33. This power might by the scheme be transferred from the Dean and Chapter to the borough council of Westminster.

The high bailiff, appointed by the Dean and Chapter, is, and will be, the sheriff within the meaning of the Lands Clauses Consolidation Acts (sect. 3 of the Act of 1869 (32 & 33 Vict. c. 18)); is, and will be, the returning officer for the parliamentary boroughs of the Strand, St. George, Hanover Square, and Westminster (sect. 12 (5) of the Re-distribution of Seats Act, 1885 (48 & 49 Vict. c. 23)); and was the town clerk within the meaning of the Registration Acts. But, in future, by sect. 4 (1), the town clerk of the borough is to be the town clerk within the meaning of the Registration Acts: also see sect. 27 (2), *post*.

The Close of the Collegiate Church of St. Peter, Westminster, is included in Schedule C. to the M. M. A., 1855. For poor law purposes it forms part of the St. George's Union, being included in Ward No. 3 of the parish of St. Margaret, Westminster. The Close was added to St. George's Union by L. G. B. Order, dated 14th September, 1875. It is in the borough of Westminster for parliamentary elections, and in the Westminster electoral division for county council elections.

Poor law services are performed by the guardians of the St. George's Union. Local government services also are partly performed by the guardians, as provided by sect. 99 of the P. H. A., 1891—these are chiefly road scavenging and dust collection. A sanitary committee is appointed by the guardians for these purposes. Lighting is undertaken by the overseers.

With regard to the rating of the close, the poor rate is paid half-yearly to the guardians of St. George's Union, and includes, besides the county rate and the ordinary contribution to the poor law authority, the expenses incurred by the guardians under the P. H. A., 1891, usually defrayed out of the general rate. On the other hand, the general rate includes, in addition to the school board assessment and the expenses of lighting, the police rate, which is usually included in the poor rate. In 1898—99 the rates levied in the close were:—Poor rate, 3s. 6d.; general rate, 2s.

The guardians of St. George's Union will, as a sanitary authority, have a *locus standi* as a local authority under sect. 213 (6), M. C. A., 1882, incorporated by sect. 16 (1) (b), pp. 135 and 143, *ante*.

The Dean and Chapter possess the prescriptive right to close the two gateways giving access to Dean's Yard every night, and once a year for a whole day. See, generally, L. C. C. "Report of proceedings

. . . with respect to the union of the close . . . with the united parishes of St. Margaret and St. John, Westminster," October, 1894.

The City of Westminster.—With regard to the claim of the ancient parliamentary borough of Westminster to the title of "city," the following extract from Blackstone's Commentaries, ed. 1829, vol. I., p. 114, may be of interest:—

"A city is a town incorporated, which is or hath been the see of a bishop; and though the bishopric be dissolved, as at Westminster, yet it remaineth a city (Coke Litt. 109). Westminster was one of the new bishoprics created by Henry VIII. out of the revenues of the dissolved monasteries (2 Burn. Eccl. Law, 70). Thomas Thirleby was the only bishop that ever filled that see: he surrendered the bishopric to Edward VI., 30th March, 1550, and on the same day it was dissolved and added again to the bishopric of London (Rym. Foed. 15 tom., p. 222). Queen Mary afterwards filled the church with Benedictine monks, and Elizabeth, by authority of Parliament, turned it into a collegiate church subject to a dean; but it retained the name of city, not perhaps because it had been a bishop's see, but because, in the letters patent erecting it into a city, King Henry declared *volumus itaque et per presentes ordinamus quod ecclesia cathedralis et sedes episcopalis, ac quod tota villa nostra Westmonasterii sit civitas, ipsamque civitatem Westmonasterii vocari et nominari volumus et decernimus*. There was a similar clause in favour of the other five new-created cities, viz., Chester, Peterborough, Oxford, Gloucester, and Bristol."

"Westminster became a city by express creation, and not singly by making it the see of a bishop, however sufficient that of itself might have been": see Hargrave and Butler's notes 123 and 124 to their Coke upon Littleton, vol. I. p. 109 b. See also Coke's Institutes, Part III. cap. LI.; Madox, *Firma Burgi* (1726), pp. 2, 3; Christian's Blackstone (1800), 13th ed., vol. I. p. 114, n.; Chitty's Blackstone, vol. I. p. 109, n.; 1 Woodd. 302; Jac. Dict. v. City. The letters patent, dated 17th December, 32 Hen. VIII., 1540, are set out in full in Burnett's "Hist. of the Reformation," pp. 229—233 of the collection of records and original papers at end of vol. I., 1715 ed. (see also p. 286). See Rym. Foed., tom. xiv., p. 709, and Dugdale, vol. I., pp. 280, 320. In 1551 a private Act (5 & 6 Edw. VI. c. 11) was passed for Westminster to remain a cathedral within the diocese of London.

As to the "charter" founding the Westminster bishopric and creating Westminster a city, see Phillimore's Ecc. Law, vol. I., p. 144 *et seq.*; and 31 Hen. VIII. c. 9; 1 Mar. sess. 3, c. 9; 1 Eliz. c. 22; and

6 Anne, c. 75, there referred to. As to the grant of a charter creating the ancient parliamentary borough of Westminster a city, see p. 5, *ante*, and Addenda.

In reference to the hamlet of Knightsbridge and Kensington Palace, see sects. 18 (1) and 21, pp. 157 and 163, *post*.

16—(4.) Provided that notification in the *London Gazette*, and in such other manner as the Committee of Council may direct, of a draft scheme having been prepared or of a scheme having been settled, and of the place where copies of it can be inspected and obtained, shall be substituted for publication of the draft scheme or scheme in the *London Gazette* or in the manner required by the Seventh Schedule to the Municipal Corporations Act, 1882.

Publication.—The mode of publication here indicated is substituted for publication in the *London Gazette* or in the manner required by the Seventh Schedule to the M. C. A., 1882, p. 145, *ante*.

Section 17.

BOROUGHES AND PARISHES.

17. Rules as to boroughs and parishes.]—(1.) Every part of the administrative county of London outside the City shall be situate in some borough and some parish, and a parish shall not be situate in more than one borough, or partly in a borough and partly in the City.

Parish.—By the Interpretation Act, 1889, s. 5, in every Act passed after the year 1866, the expression “parish” shall, unless the contrary intention appears, mean a place for which a separate poor rate is or can be made, or for which a separate overseer is or can be appointed.

By the Extra-Parochial Places Act (20 Vict. c. 19), 1857, all extra-parochial places are deemed to be parishes for relief of the poor, registration, burials, public health, &c.

The Inner and Middle Temples are not affected, being deemed to be within the City for the purposes of this Act: see sect. 22, p. 164, *post*. It is considered that a part of the Middle Temple is in the county of London. The Temples are extra-parochial at the present time, and will remain so.

Places affected by Section.—The following places are affected by this section:—

The Liberty of Glasshouse Yard is partly in the City and partly in Holborn. It comprises six acres which are part of the parish of St. Botolph, Aldersgate. The greater part of the liberty (five acres) is in the Holborn district for local government purposes; the remainder is in the City of London for such purposes. The whole of the parish of St. Botolph (including the liberty) is in the City of London Union. Both parts of Glasshouse Yard are in the East Finsbury division of the parliamentary borough of Finsbury, the parish of St. Botolph, exclusive of the liberty, being in the City of London for county council and parliamentary electoral purposes.

Furnival's Inn is partly extra-parochial and partly in the City. As to part of it (one acre, eight houses), extra-parochial, and as to the remainder (four houses) administered for local government purposes by the City authorities. The whole of it is in the Holborn Union. The part in the City of London for local government purposes is also in the City for parliamentary and county council electoral purposes, but the extra-parochial part is in the Holborn division of the borough of Finsbury.

Whitechapel.—A part of Whitechapel is partly in the City (one acre, six houses) for local government purposes and also for county council and parliamentary electoral purposes. Another part, containing one house, is in the City of London for local government purposes, but forms part of the Whitechapel electoral (county council) division, and of the Tower Hamlets parliamentary borough. The remainder (173 acres) of the parish of Whitechapel forms part of the Whitechapel district and of the Whitechapel division of the Tower Hamlets. The whole parish (the three parts) is in the Whitechapel Union.

The Tower of London.—There is some question whether the Tower of London is within the county of London, although it is extra-parochial and has from the earliest times been independent of the City in all respects. See Maitland's London, vol. I. p. 147; Carlisle's Topog. Dict., tit. Tower Extra. As to the description "Tower, District

of," in Sched. B. to M. M. A., 1855 (Whitechapel district), see *Reg. v. Trustees of Tower Hill*, 30 J. P. 516. It was doubtful whether the Tower was included in the "district of the Tower," but the Government contribute to the Whitechapel district board rates upon a basis of 4,000*l*. These doubts are, however, removed by the specific mention of the Tower and its liberties as part of a proposed borough.

The administrative powers and duties of the quarter sessions and justices of the liberty of the Tower, and their property and liabilities were transferred to the L. C. C. by sect. 48, L. G. A., 1888 : see also sect. 117. By Order in Council dated 30th April, 1894, the exclusive jurisdiction of the liberty of the Tower was abolished, and the liberty united with the county of London for all the purposes for which the justices of the liberty had hitherto exercised separate jurisdiction.

The Tower is extra-parochial, and is in no union, but is comprised in the Whitechapel division of the Tower Hamlets for county council and parliamentary electoral purposes. Ecclesiastically it forms the parish of St. Peter-ad-Vincula.

Saffron Hill.—A small part of Saffron Hill (one acre, eleven houses) is under the municipal government of the City. The remaining part (thirty-one acres) is in the Holborn district.

The whole area of Saffron Hill, Hatton Garden, and Ely rents is in Holborn Union, and in the Holborn division of the borough of Finsbury.

Shoreditch.—An acre (with three houses) of the parish of Shoreditch is municipally governed by the City authorities. In other respects it forms, with the rest of the parish, part of the poor-law parish of Shoreditch, which is conterminous with the borough of Shoreditch, the borough being divided into two divisions, Haggerston and Hoxton. The small part of Shoreditch is situate in the latter division.

Other Extra-Parochial Places :—

Lincoln's Inn and Gray's Inn.—See note to sect. 22, p. 164, *post*. They are in no union and are extra-parochial, and form part of the Holborn division of Finsbury parliamentary borough.

Staple Inn is extra-parochial, but forms part of the Holborn Union, and of the Holborn division of Finsbury parliamentary borough. Never having had poor, it was held to have been duly united to Holborn Union under 4 & 5 Will. IV. c. 76, s. 26, and laid under a union contribution order under 24 & 25 Vict. c. 55, s. 9 : *Staple Inn v. Holborn Guardians*, 9 Jur. (N. S.) 652 ; 32 L. J. M. C. 181 ; 27 J. P. 695.

Charterhouse.—See note to sect. 22, p. 164, *post*. It forms part of the Holborn Union and of the East Finsbury division of Finsbury parliamentary borough.

Close of St. Peter.—See p. 149, *ante*, and First Sched., p. 209, *post*.

Evidence of Extra-Parochiality.—See *Mytton v. Thornbury*, 29 L. J. M. C. 109; 6 Jur. (N. S.) 341; 24 J. P. 180; 2 E. & E. 557; *Braithwaite v. Hooke*, 26 J. P. 660.

The entry of a place in the registrar-general's report as extra-parochial is not conclusive as to its being extra-parochial: *Reg. v. Cousins*, 28 J. P. 278; 10 Jur. (N. S.) 722.

Poor Law Settlements.—With regard to the division of parishes under this and the succeeding section, a scheme under the Act will no doubt provide that any such division shall not destroy the settlements which poor persons may have therein, but that every person who has at the date of such division a settlement in any parish or place divided as aforesaid shall be deemed to be settled in the new parish which shall contain the house or other place or places in which the settlement, acquired or derived by such person, shall have been gained. A similar provision should also be made so that any such division shall not destroy a status of irremovability acquired by virtue of a residence in the union of which the divided parish shall have formed part or consisted.

It is the practice of the L. G. B., acting under the Act of 1888, whenever a parish is divided, to take care that the settlements are not thereby destroyed.

The powers of the L. G. B. as to the adjustment of parishes are conferred by 30 & 31 Vict. c. 106, s. 3; 34 & 35 Vict. c. 70; 39 & 40 Vict. c. 61, ss. 1—9; 42 & 43 Vict. c. 54; 45 & 46 Vict. c. 58; see sect. 57 of L. G. A., 1888.

17—(2.) An Order in Council under this Act may divide a parish or place into parts for the purpose of giving effect to this section or of constituting a satisfactory area for a borough, and, unless otherwise provided by the Order or by a scheme under this Act, each part shall be a separate parish.

Section 18.

DETACHED PARTS.

18. *Detached parts of parishes.*—(1.) Every part of a parish in London which is wholly detached from the principal part of the parish shall by an Order in Council under this Act be annexed to or divided between any of the boroughs which it adjoins, and be either constituted a separate parish or be annexed to or divided between any of the parishes which it adjoins, so however that the provisions of this Act with respect to a parish not being situate in more than one borough shall be observed.

Provided that if the Commissioners under this Act make a special report to Parliament that by reason of anything done under any of the adoptive Acts, or for any other exceptional reason, it is impracticable to deal with a detached part of a parish in manner required by the foregoing provisions of this section, those provisions shall not apply.

And further provided that the foregoing provisions of this section shall not apply to the hamlet of Knightsbridge.

Parliamentary Areas.—Note that by sect. 31 (3) the limits of parliamentary boroughs and parliamentary counties are not to be altered by this Act.

Poor Law Areas.—Nothing in the Act affects the poor law areas. But the L. G. B. have ample powers to make by Orders such alterations as may be deemed advisable to secure conterminous areas.

Division of Detached Parts.—The effect of this section is that a detached part of a parish may be constituted a separate parish, but it may not then be divided between any of the boroughs which it adjoins, for this would be an infraction of the rule that a parish is not to be situate in more than one borough.

Detached Parts of Parishes, being within the County of London :—

- (1.) Kidbrooke, detached, surrounded by Charlton and Eltham.
- (2.) Chelsea, detached (Kensal Town), situated to the north of the

parish of Kensington against the county boundary, and adjoining Paddington and Kensington.

- (3.) Clapham, detached, surrounded by the parishes of Battersea and Streatham.
- (4.) St. Clement Danes, detached, surrounded by the precinct of the Savoy, and the parish of St. Martin-in-the-Fields.
- (5.) St. Margaret, Westminster, detached, hamlet of Knightsbridge, surrounded by the parishes of Paddington, Kensington, and St. George, Hanover Square.
- (6.) Streatham, detached, surrounded by the parishes of Camberwell and Lambeth.

It may be mentioned that the map which accompanies the Report of the R. C. A. L. shows a detached part of Kensington on the Chelsea Embankment, bounded by the parish of Chelsea and the river. Kensington never exercised any jurisdiction over the area in question, and in 1895, by a correction of the Ordnance Survey, steps were taken to show it in future as within the parish of Chelsea.

A part of Chiswick Eyot (or Ait) is in the parish of Hammersmith; but it is not a "detached part," being within the parish boundary.

Mention may also be made of the closed cemetery of St. George, Hanover Square, situated to the north of the Uxbridge Road, and forming an indentation into the parish of Paddington as far north as Connaught Street. It is deemed to be part of St. George's parish, and the vestry of Paddington receives 2*l.* per annum from the St. George's vestry in lieu of rates in respect thereof under the local Act, 3 Geo. III. c. 1. (1763), "for vesting certain parcels of land in Paddington . . . in the rector and churchwardens of St. George, Hanover Square, and appropriating the same for a burial ground for the said parish." See map published with the 1898 Ann. Rep. of the Paddington Vestry, and p. 68 thereof. For the purpose of forming a satisfactory area (sect. 17 (2)), the boundary may here be adjusted so as to include this burial ground in the borough of Paddington. As to the contribution, see sect. 16 (2). North Woolwich is not a detached part.

Special Report.—It is understood that the object of the first proviso is to enable Kensal Town to remain part of the borough of Chelsea. Otherwise Kensal Town would have become part of the borough of Paddington, or of the borough of Kensington, or divided between those boroughs. The authors are not aware that in the other detached parts (except as regards the hamlet of Knightsbridge) any exceptional reason exists to prevent the operation of the section.

Hamlet of Knightsbridge.—The provisions of this section are not to apply to the hamlet of Knightsbridge, and it will consequently remain part of the parish of St. Margaret, Westminster, although a detached part thereof; but by sect. 21, p. 163, *post*, Kensington Palace, which is part of the hamlet, may be detached from the borough of Westminster and attached to the borough of Kensington.

18—(2.) Where the county of London surrounds a detached part of a parish in another county, the foregoing provisions shall apply, and the detached part shall for all purposes become part of the county of London and of the appropriate county electoral division.

Detached Parts of Outside Parishes.

- (a) The two detached parts of the parish and urban district of South Hornsey, in the county of Middlesex, surrounded by the parishes of Stoke Newington and Islington. See sub-sect. 3, *infra*.
- (b) The small detached part of the parish of Mitcham, in the county of Surrey, wholly surrounded by the parish of Tooting Graveney in the county of London. Under this provision it will become part of the latter parish in the Wandsworth borough.

18—(3.) Where a detached part so becomes part of the county of London, and is part of any urban district the remainder of which adjoins the county of London, the whole of the district may, by Order in Council, if it seems expedient after considering all the circumstances of the case, be added to and form for all purposes part of the county of London and of the appropriate borough.

This provision would enable the whole of the urban district of South Hornsey, in the county of Middlesex, to be amalgamated with Stoke Newington to form one municipal borough. This appears to be contemplated by the First Schedule, p. 209, *post*.

The district drains into the metropolitan main drainage system, and makes a contribution to the L. C. C. in respect thereof.

Mitcham is not affected by this sub-section, that parish forming part of the Croydon *rural* district, with the parishes of Merton, Morden,

Beddington, Wallington, Addington, Coulsdon, Sanderstead, and Woodmansterne.

18—(4.) Where a detached part of a parish in the county of London is wholly surrounded by any other county, the detached part shall for all purposes become part of that county, and where a detached part as aforesaid is surrounded by more than one county, that detached part shall become part of such county as shall be determined by Order in Council under this Act, and every such detached part shall, by Order in Council, be either constituted a separate parish or annexed to or divided between any parish or parishes which it adjoins, and be added to the appropriate county district and county electoral division.

Detached Parts outside the County of London.—This sub-section will affect—

- (a) The detached part of the parish of Putney surrounded by the parish of Barnes, in the county of Surrey, situate between the river Thames on the west and the Lower Bridge (or Lonsdale) Road on the east. The detached part being wholly surrounded by the county of Surrey, it will become for all purposes part of that county.
- (b) The detached part (of sixty-five acres) of the parish of Clerkenwell, surrounded by the parish of Hornsey, in the county of Middlesex, situate at Muswell Hill, some two miles beyond the London boundary. It will become for all purposes part of the county of Middlesex. It may be annexed to the Hornsey parish and urban district. Such a proposal was made in 1893, but was objected to by the principal part of the parish and was defeated. The detached part forms part of the Holborn Union for poor law purposes, and of the Central Finsbury Division for parliamentary and county council electoral purposes.

The authors are not aware of any detached part of the county of London surrounded by more than one county.

18—(5.) Nothing in this section shall apply to the City of London.

See note to sect. 1, p. 5, *ante*; also sects. 17, p. 151, *ante*, and 22, p. 164, *post*.

The whole of London Bridge is held to be within the City of London, together with a plot of ground which was situate at the south end of the *old* London Bridge on the Surrey shore and called the Bridge Foot. This is apparently the only detached part of the City of London.

18—(6.) The London County Council and the council of any adjoining county shall be entitled to be heard on any alteration or proposed alteration of the area of the county of London.

The county councils of Middlesex and Surrey will accordingly be entitled to be heard in respect of Clerkenwell (detached: *plus*) and South Hornsey (detached: *minus*) as regards Middlesex; Putney (detached: *plus*) and Mitcham (detached: *minus*) as regards Surrey. The L. C. C. are not given any *locus standi* as to changes which will not alter the area of the county.

Section 19.

WOOLWICH.

19. *Application of Act to Woolwich.*—(1.) A scheme under this Act shall provide for placing Woolwich under the general law applying to metropolitan boroughs, and for the repeal of the application thereto of the provisions of the Public Health Acts and other enactments not applying to London, and for the application thereto of the Metropolis Management Acts, 1855 to 1893, and other enactments applying to London.

Woolwich.—The parish of Woolwich has been, since the L. G. A., 1894, the only parish in the kingdom governed by a "local board." It was constituted a sanitary district under the Public Health Act, 1848 (11 & 12 Vict. c. 63), and other Acts amending it, by a provisional order confirmed by the Public Health Supplemental Act, 1852 (No. 2) (15 & 16 Vict. c. 69). The Act of 1848, the Local Government Act, 1858, the Sewage Utilization Act, 1867, and amending Acts were repealed generally by the P. H. A., 1875, s. 343.

Woolwich was brought within the metropolis by the M. M. A., 1855, by sect. 238, for metropolitan purposes therein stated, the local board being substituted for the vestry of the parish. See also Schedule A., Part II., M. M. A., 1855.

As the Local Government Act, 1858 (by sect. 3), and the P. H. A., 1875 (by sects. 2 and 4), excepted the metropolis, save as otherwise expressly provided, and did not therefore extend to the parish of Woolwich, it was doubtful whether the P. H. A., 1848, and the other amending Acts were still in force, and to remove these doubts the older Acts were expressly declared to continue in force in Woolwich by the L. G. B. Prov. Orders Conf. (Amersham Union) Act, 1880 (43 & 44 Vict. c. lix.), s. 2, repealed by Sched. 4 to the Public Health (London) Act, 1891.

The local board is the local authority under the Public Health (London) Act, 1891, s. 99, but certain provisions of the P. H. A., 1875, and amending Acts of 1882, 1883, 1884, 1888, and 1890 were extended to Woolwich exclusive of the rest of London, by sect. 102 and the Second Schedule of P. H. A., 1891, repealed by the Lon. G. A., Third Schedule, *post*.

See also sects. 103 and 140 of the Public Health (London) Act, 1891.

The local board, who are the local authority for paving, lighting, local sewerage, &c., was elected in practically the same manner as other local boards under the P. H. A., 1875, and the same provisions as to the qualifications of electors and of members remained in force until 1894, when the L. G. A., 1894, assimilated Woolwich with the vestries and district boards as regards the qualifications and disqualifications of electors and of persons to be elected, and the mode of conducting elections.

Woolwich local board area is the only sanitary district in the metropolis to which the Allotments Acts apply: Allotments Act, 1887, s. 17; P. H. A., 1875, s. 5; Public Health (London) Act, 1891, s. 102. As to L. C. C.'s power in case of local board's default, see sects. 2 and 3 of Allotments Act, 1890.

The local board possesses peculiar powers under local Acts, *vide e.g.*, 47 Geo. III. sess. 2, c. cxi. 1807; 48 Geo. III. c. 146, 1808, &c.

As are the vestries and district boards, it is the local authority under the London Building Act, 1894, s. 5 (42); and under Part II. of the Housing of the Working Classes Act, 1890; but there is a special provision as to borrowing in sect. 46 (8) of the last-named Act.

The parliamentary borough (and county council division) of Woolwich comprises the parishes of Eltham, Woolwich and Plumstead. Eltham is in the Lewisham Union for poor law purposes, and in the Lee district for local government purposes. The parishes of Woolwich and Plumstead with Charlton and Kidbrooke form the Woolwich Union. By the Metropolitan Management (Plumstead and Hackney) Act, 1893 (56 & 57 Vict. c. 55), the Plumstead district was dissolved, the Plumstead vestry being incorporated as an administrative (Schedule A.) vestry, the other parishes in the district (*viz.*, Charlton, Kidbrooke, Lee and Eltham) being formed into the Lee district.

The borough of Woolwich sends one member to Parliament (Re-distribution of Seats Act, 1885, 48 & 49 Vict. c. 23, Sched. 4), and two representatives to the L. C. C. (L. G. A., 1888, s. 40 (1) (8)).

19—(2.) Subject to the provisions of any such scheme, this Act shall apply to Woolwich in like manner as if the local board of health thereof were an administrative vestry.

19—(3.) Nothing in this Act shall prevent the council of any borough consisting of or comprising Woolwich from continuing to make any contribution for the purpose of technical education

hitherto made by any local authority, or from exercising any existing powers of carrying on a market.

Market.—The Woolwich local board owns a local market which yields an annual profit of about 500*l.*, applied to the relief of the rates. The market rights were granted by letters patent in the 16th year of James I. to Sir William Barne, Knight, and Hugh Sydyard, Esq., and were purchased by the local board from Sir Spencer Maryon Wilson, Bart., on 13th June, 1887, with a piece of land called the "market-place" in High Street, Woolwich.

This service is not directly performed by any other local sanitary authority in the county of London. There are, however, two markets indirectly controlled by local authorities, the surplus revenues from which go to the relief of the rates—the Whitechapel hay market, under the control of trustees, and the Borough market, also under the control of trustees, including the churchwardens and overseers of St. Saviour, Southwark.

Technical Education.—The Woolwich local board being an urban sanitary authority within the meaning of the Public Health Acts, is a local authority for the purposes of technical instruction, and may from time to time out of the local rate supply or aid the supply of technical or manual instruction to such extent and on such terms as the authority thinks expedient, subject to certain restrictions contained in the Technical Instruction Acts. See 52 & 53 Vict. c. 76, ss. 1 and 4, 54 Vict. c. 4, 55 & 56 Vict. c. 29. The Woolwich local board make a grant of 500*l.* to the funds of the Woolwich Polytechnic. The L. C. C. is the local authority for the rest of the county: sect. 4, 52 & 53 Vict. c. 76.

Section 20.

PENGE.

20. *Special provision as to Penge.*—(1.) An Order in Council under this Act may either annex Penge to the borough of Lewisham or to the borough of Camberwell, or separate it from the county of London and make it form part of the county of Surrey or of the county of Kent, and if it is so separated shall provide for constituting it an urban district, or for adding it to an adjoining county borough or urban district, and if necessary shall determine the county electoral division to which it is to belong.

Penge.—The hamlet of Penge (or Pensgreen) is in the Lewisham district for local government purposes (M. M. A., 1855, Sched. B.); in the Dulwich Division of the borough of Camberwell for electoral (parliamentary and county council) purposes; in the Croydon Union for poor law purposes; and in the registration county of Surrey.

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For London School Board electoral purposes it is in the Greenwich Division.

Sect. 131, Public Health (London) Act, 1891, provides for the apportionment of certain expenses incurred under that Act between Penge and the remainder of the Lewisham district. See also sect. 43 (1) (c), L. G. A., 1888.

Sect. 246 of the M. M. A., 1855, provided that nothing in that Act was to affect any question as to whether the hamlet was or was not a part of the parish of Battersea. The question whether the hamlet was liable to contribute to the support of the poor of Battersea was decided in 1859 by the case of *Maughan v. Wilson* (32 L. T. 275), Lord Campbell, C. J., holding that there was no evidence that there was a joint fund, but there was distinct evidence of a separate fund, and that all the cases showed that that was the real test. It was also stated that Penge had its own headborough, an officer in the nature of a constable, it was a hamlet and a township within the 13 & 14 Car. II. c. 12, s. 21, and the powers thereby given had been actually exercised.

Penge is described as a hamlet in the parish of Battersea and in the hundred of Brixton, in Manning and Bray's "Surrey," vol. III.; also in Gorton's, Lewis's, and Carlisle's Topog. Dicts.

By the County Rate Act, 1852 (15 & 16 Vict. c. 81), the justices at general or quarter sessions were required to form a committee to prepare and revise the basis or standard of the county rate. The V. (M.) A., 1869 (32 & 33 Vict. c. 67), repealed the above Act in this matter, so far as the Metropolis as defined by the Act was concerned. But the Metropolis, as defined by the Valuation Act, is not co-extensive with that defined by the M. M. A., 1855, and the result is that the hamlet of Penge is excluded from the operation of the Act of 1869. The London County Council, therefore, as transferees of the powers of the Quarter Sessions of Surrey, appoint a county rate committee in accordance with the County Rate Act. This committee exercises these powers, and deals with questions relating to the assessment of Penge (a).

Also see sect. 13 of this Act, p. 117, *ante*.

20—(2.) A scheme under this Act shall make such provision as may be necessary for the apportionment and transfer of property and liabilities, and for the repeal of the application to Penge of the Metropolis Management Acts, 1855 to 1893, and any other enactments applying to London, and for the application thereto of the Public Health Acts and other enactments not applying to London.

(a) See R. C. A. L., 1894, vol. II., App. to App. VII., p. 289; and L. C. C. "Statement as to present Powers and Duties of the L. C. C.," No. 6,322, 3rd July, 1893.

Section 21.

KENSINGTON PALACE.

21. Provision as to Kensington Palace.]—An Order in Council under this Act may detach Kensington Palace from the borough of Westminster and attach it to the borough of Kensington.

Kensington Palace.—Kensington Palace is in the hamlet of Knightsbridge, which is a detached part of the parish of St. Margaret, Westminster. See sect. 18 (1), p. 155, *ante*, as to detached parts of parishes, which provides that that section shall not apply to the hamlet of Knightsbridge.

It will be noticed that Kensington Palace only is referred to. If the palace is detached from Westminster and attached to Kensington, a small part of the hamlet to the west of the palace would remain in the borough of Westminster, and the palace would therefore be a detached part of Kensington in Westminster. But by sect. 1 the Order in Council shall form Kensington and Westminster into separate boroughs subject to such adjustment of boundaries as may appear to her Majesty in Council expedient for simplification or convenience of administration. It would appear that the part of the hamlet between the palace and the boundary of the parish of Kensington might by this provision be attached to Kensington, the effect of the proviso to sect. 18 (1) being to prevent the operation of that section which would have made it compulsory for the hamlet to be either annexed to Kensington or to Westminster or divided between them.

If this could be done it will be seen that any considerable exercise of the power in question might in effect nullify the proviso of sect. 18 as to the hamlet of Knightsbridge. It might therefore be contended that the words of sect. 1, quoted, have no application to detached parts such as the hamlet, inasmuch as such detached parts are expressly dealt with by sect. 18, and if this be the correct interpretation, and if advantage be taken of sect. 21, the result will be that Kensington Palace will constitute a detached part of the borough of Kensington in Westminster, that part of the hamlet lying between the palace and the boundary of the parish of Kensington remaining by force of the proviso to sect. 18, in the parish of St. Margaret, Westminster. And in order to satisfy the requirements of sect. 17 (1), p. 151, *ante*, the Order in Council should make the palace part of the parish of St. Mary Abbott's, Kensington.

Financial Adjustment.—The Treasury have, since 1874, made a contribution of 450*l. per annum* to the overseers of Westminster in lieu of rates in respect of the palace, and in the event of the palace being attached to Kensington, a scheme may give effect to sect. 16 (1) (d), p. 139, *ante*.

Section 22.

TEMPLES.

22. Provision as to the Temples.]—The places known as the Inner and Middle Temples shall for the purposes of this Act be deemed to be within the City of London.

Deemed to be within the City of London.—This will have the effect of excluding the Temples from the operation of the Act: see p. 152, *ante*.

The Inns of Court.—By sect. 43 of the Divided Parishes and Poor Law Amendment Act, 1876 (39 & 40 Vict. c. 61), the exemption contained in 20 Vict. c. 19, s. 3, that the Inner Temple, Middle Temple, Gray's Inn, and the Charterhouse, should not be added to any union, &c., was removed, provided that no such Inn of Court shall be added to a union or parish so long as the benchers thereof shall make payments, as regards the two Temples to the guardians of the City of London Union, as regards Gray's Inn to the guardians of Holborn Union, of such sum as shall be called for by such guardians respectively as a contribution in aid of the common fund of such unions.

So much of this section as relates to the Charterhouse was repealed by the Statute Law Revision Act, 1892, Charterhouse having been added to the Holborn Union by L. G. B. Order dated 10th March, 1877.

Gray's Inn forms no part of the Holborn Union, although the assessment committee of that union acts for the Inn under sect. 59, Val. (Met.) Act, 1869.

Lincoln's Inn forms no part of the united parish of St. Giles-in-the-Fields and St. George, Bloomsbury, but the assessment committee of that parish acts for it under sect. 59, Val. (Met.) Act, 1869.

The Assessment Committee of the City of London Union similarly acts for the Inner Temple and Middle Temple under sect. 59, Val. (Met.) Act, 1869. For local government purposes the Temples are extra-parochial: M. M. Act, 1855, Sched. I.

As to Lincoln's Inn, see 10 & 11 Vict. c. cxxi., and 20 Vict. c. 19, s. 7.

See further as to the Temples, Tanner's Not. Mon. p. 307; Mon. Angl. tom. II. pp. 511 *et seq.*; tom. III.; Rym. Foed., Stow, p. 439; Newcourt, vol. I. p. 544; Downing's Hist. Mid. Temple (1739).

Section 23.

CHURCH AFFAIRS.

Supplemental.

23. Church affairs and charities.]—(1.) Nothing in this Act shall transfer to a borough council any powers or duties of a vestry which relate to the affairs of the Church or any interest of a vestry

in any church property, or shall make any incumbent or churchwarden an *ex-officio* member of a borough council, and a scheme under this Act shall provide for vesting any such powers and duties in the inhabitants of some parish or ecclesiastical district, and for vesting any such interest in the incumbent and churchwardens or one or some of them, and for the collection of any rate connected with a church or an incumbent by the churchwardens, or by officers appointed for the purpose.

Powers and Duties of a Vestry relating to the Affairs of the Church.—This is one of the provisions subject to which the powers and duties of every elective vestry and district board are transferred to the council of the borough comprising the area within which those powers are exercised: sect. 4, p. 48, *ante*.

By the M. M. A. A., 1856 (19 & 20 Vict. c. 112), all the powers and duties relating to the affairs of the Church which might have been exercised or performed by any open or elected vestry, or in any meeting of the parishioners, inhabitants, or ratepayers generally under any local Act or otherwise were transferred to the vestries constituted by the M. M. A., 1855. The effect of the section is to restore to the inhabitants of a parish or ecclesiastical district the control of the affairs of the church of such parish or ecclesiastical district.

Apart from local Acts the elected vestry referred to existed where the Vestries Act, 1831 (1 & 2 Will. IV. c. 60;—commonly called Hobhouse's Act), had been adopted. This Act was repealed by the M. M. A., 1855. This elected vestry superseded any open vestry or meeting of parishioners, and the elected vestry was superseded by the vestry constituted by the M. M. A., 1855.

For instances of a select vestry by local custom, apart from statute, see *R. v. St. Martin's-in-the-Fields* (1832), 3 B. & Ad. 907; *Golding v. Fenn* (1828), 7 B. & C. 765; *R. v. Brain* (1832), 3 B. & Ad. 614.

Affairs of the Church.—The duties and powers referred to relate to the same matters as are mentioned in the M. M. A., 1855, s. 90, and do not apply to the right of presentation to a church vested in the parishioners and inhabitants: *Carter v. Cropley*, 26 L. J. Ch. 246.

By sect. 75 (2), L. G. A., 1894, the expression "affairs of the church" includes the distribution of offertories or other collections made in any church.

Church Property.—Compare the definition of "ecclesiastical church

property" in the repealed City of London Parochial Charities Act, 1883, s. 5.

Ex-officio Members.—See sect. 2 (5), Lon. G. A., p. 21, *ante*.

Church Rate.—The Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109), abolished compulsory church rates except where, at the time of the passing of the Act, the rate was applicable to purposes other than "ecclesiastical purposes"—by sect. 10 of the Act defined to mean "the building, repairing, enlargement, and repair of any church or chapel, or any purpose to which by common or ecclesiastical law a church rate is applicable, or any of such purposes;"—or where money had been borrowed on the security of the rate and remained due; or where church rates were levied under any private or local Act in consideration of abolition of tithes, or other valuable consideration given. See *Reg. v. St. Marylebone Vestry*, (1895) 1 Q. B. 771; 64 L. J. Q. B. 622.

By the M. M. A. A., 1856, it was provided that where church rates were made in open vestry, or by any meeting of the parishioners, inhabitants, and ratepayers generally before the passing of the 18 & 19 Vict. c. 120, such power did not pass to any vestry constituted under that Act, but remained in the open vestry or meeting. Where, by a local Act, the vestrymen, governors, and directors of the poor were to make a rate for payment of the rector's stipend, it was held that the power was transferred to the vestry: *Reg. v. Stretfield*, 32 L. J. M. C. 236; 27 J. P. 391; who could be compelled by mandamus to make the rate: *Reg. v. St. George's, Southwark* (No. 2), 61 L. J. Q. B. 398; 56 J. P. 821.

23—(2.) Provided that any building which belongs to any body whose powers and duties are transferred to any borough council by or under this Act, and which has been erected wholly or partly on a churchyard shall, with its appurtenances, be transferred to and vest in the council, subject to such right of use for church purposes as may be given by the scheme.

Any Building.—The words "any building" will meet a case in Islington; a mortuary and coroner's court which will by the Act be transferred from the vestry to the borough council were erected upon the churchyard of St. Mary Magdalen (the old Chapel-of-Ease), Holloway Road.

The principal buildings affected are town and vestry halls and offices.

23—(3.) As from the appointed day, the churchwardens of every parish within a metropolitan borough shall cease to be overseers, and references in any Act to the churchwardens and overseers of any such parish shall, except so far as those references relate to the affairs of the church, be construed as references to the council of the borough comprising the parish, and the legal interest in all property vested either in the overseers or churchwardens and overseers of any such parish (other than property connected with the affairs of the church or held for an ecclesiastical charity within the meaning of the Local Government Act, 1894), shall, subject to the provisions of any scheme under this Act, vest in the borough council.

Powers and Duties of Churchwardens.—The churchwardens were, by virtue of their office, overseers of their parish (43 Eliz. c. 2, s. 1).

By the L. G. A., 1894, s. 5 (2), churchwardens ceased to be overseers in rural parishes. By this Act they will cease to be overseers in the metropolis, and it will be only in urban parishes outside London, where no Order under sect. 33 of the L. G. A., 1894, has been made conferring upon any other body the powers and duties of overseers, that churchwardens will continue to be overseers.

By the M. M. A. A., 1856, s. 2, nothing was to transfer to the vestry the power of appointing churchwardens which was vested in any open or elected vestry or meeting of inhabitants, where such vestry or meeting acted exclusively for any district created for ecclesiastical purposes only. In other cases, where the power of appointing churchwardens had been vested in any such vestry or meeting, the power was transferred to the vestry constituted under the M. M. A., and by this section a scheme is to provide for vesting this power in the inhabitants.

By this sub-section the civil powers and duties of the churchwardens are transferred to the borough councils; but their ecclesiastical powers and duties will remain. As to the former, see the notes to sect. 11 (1), p. 103, *ante*; and as to the latter, and as to churchwardens generally, see Phillimore's "Ecclesiastical Law," 1895 ed., and Prideaux's "Churchwardens' Guide," 16th ed.

Affairs of the Church.—As to the meaning of these words, see note to sub-sect. (1), p. 165, *ante*.

Ecclesiastical Charity.—This term is defined by sect. 75 (2) of the L. G. A., 1894, as follows:—

The expression “ecclesiastical charity” includes (a) a charity, the endowment whereof is held for some one or more of the following purposes:—

- (a) for any spiritual purpose which is a legal purpose; or
- (b) for the benefit of any spiritual person or ecclesiastical officer as such; or
- (c) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or
- (d) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or
- (e) otherwise for the benefit of any particular church or denomination, or of any members thereof as such.

Provided that where any endowment of a charity, other than a building held for any of the purposes aforesaid, is held in part only for some of the purposes aforesaid, the charity, so far as that endowment is concerned, shall be an ecclesiastical charity within the meaning of this Act; and the Charity Commissioners shall, on application by any person interested, make such provision for the apportionment and management of that endowment as seems to them necessary or expedient for giving effect to this Act.

The expression shall also include any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.

23—(4.) Provision shall be made by scheme under this Act for substituting nominees of the borough council for overseers as trustees of any charity, due regard being had to the area benefited by the charity.

Trustees of any Charity.—This provision is consequential on the preceding provisions of this section. The council of the borough becoming the overseers, who are trustees of many charities, it follows

(a) See p. 208, *post*.

that some power to the council to nominate trustees in their place is necessary. It does not appear that the persons so nominated need necessarily be members of the council and women would appear to be capable of appointment.

By the L. G. A., 1894, s. 14 (3), power was conferred upon parish councils to appoint additional members of the governing body of a parochial charity other than an ecclesiastical charity where the governing body did not include any person elected by the inhabitants or appointed by the parish council. By sect. 33 the L. G. B. might *inter alia* confer upon vestries any of the powers of a parish council, and in many cases orders have been made by the L. G. B. under sect. 33 conferring on vestries in London the power to appoint additional trustees in regard to parochial charities. See Annual Reports of L. G. B., 1895—98.

A scheme under sect. 15 (1) (c), p. 135, *ante*, may make provision for anything which may be done under sect. 33 of the L. G. A., 1894.

By the L. G. A., 1894, s. 75 (2), the expression "parochial charity" means a charity the benefits of which are or the separate distribution of the benefits of which is confined to inhabitants of a single parish, or of a single ancient ecclesiastical parish divided into two or more parishes, or of not more than five neighbouring parishes.

By the same sub-section the expression "trustees" includes persons administering or managing any charity or recreation ground, or other property or thing in relation to which the word is used.

23—(5.) The Charity Commissioners shall, for the purposes of this Act, have the like powers with respect to charities, subject to the like appeal, as they have under and for the purposes of the Local Government Act, 1894.

Charity Commissioners.—The Charity Commissioners are to have, for the purposes of this Act, the like powers with respect to charities as they have under the L. G. A., 1894.

It has been stated, p. 137—8, *ante*, that a scheme may do what might be done by an order of the L. G. B. under sect. 33 of the L. G. A., 1894. By that section the L. G. B. were to consult the Charity Commissioners before making any order with respect to any charity. The Charity Commissioners must therefore be consulted before any such scheme is made.

The powers referred to are those contained in sect. 70 (2) of the L. G. A., 1894, by which, if any question arises or is about to arise under this Act as to the appointment of the trustees or beneficiaries of any charity, or as to the persons in whom the property of any charity is vested, such question shall, at the request of any trustee, beneficiary or other person interested, be determined in the first instance by the Charity Commissioners subject to an appeal to the High Court brought within three months after such determination. Provided that an appeal to the High Court of Justice from any determination of the Charity Commissioners under this section may be presented only under the same conditions as are prescribed in the case of appeals to the High Court from orders made by the Charity Commissioners under the Charitable Trusts Acts, 1853 to 1891. By sub-sect. 3 an appeal shall, with the leave of the High Court or Court of Appeal but not otherwise, lie to the Court of Appeal against any decision under this section.

The conditions referred to are prescribed by the Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), s. 8, and the Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), by which no petition of appeal may be presented by any person, other than the Attorney-General, before the expiration of twenty-one days after written notice under the hand of the appellant of intention to appeal has been given to the Charity Commissioners and the Attorney-General.

23—(6.) Nothing in this Act shall affect the right to the benefit of any charity, or shall alter or confer any power of altering the defined charitable purposes (if any) to which any property is by law applicable at the passing of this Act.

Section 24.

MAYORS AS JUSTICES.

24. *Mayors of boroughs as justices of the peace.*—With respect to a mayor of a borough being by virtue of his office a justice of the peace—

- (1) he shall become a justice of the peace for the county of London;
- (2) he shall not be disqualified by reason of being a solicitor practising or carrying on business in the county of London or City of London;
- (3) he shall not practise as a solicitor before any justices of the county of London.

Mayor Justice of the Peace.—Chairmen of administrative vestries and district boards were made *ex officio* justices during their term of office by the L. G. A., 1894.

By the L. G. A., 1888, s. 2 (5), the chairman of the county council shall be, by virtue of his office, justice of the peace for the county. This provision is applied to mayors of metropolitan boroughs by sect. 2 (4), p. 10, *ante*.

Oaths to be taken by Justice.—The oaths required are the oath of allegiance and the judicial oath prescribed by Promissory Oaths Act, 1868 (31 & 32 Vict. c. 72). An affirmation may be made instead of an oath being taken under sect. 11 of that Act: see also sect. 1, Oaths Act, 1888 (51 & 52 Vict. c. 46). As to persons before whom oaths may be taken, see sect. 2, Prom. Oaths Act, 1871 (34 & 35 Vict. c. 48). Usually taken at general or quarter sessions of the county.

By the Chairmen of District Councils Act, 1896 (59 & 60 Vict. c. 22), a chairman of a district council who has been re-elected to that office on the expiration or other determination of a previous term of office may continue to act as justice of the peace without again taking the oaths mentioned in sect. 22 of the L. G. A., 1894. This provision applied to chairmen of metropolitan vestries and district boards, but it apparently will not apply to mayors of metropolitan boroughs, and there is no corresponding provision in the L. G. A., 1888: see notes to sect. 2 (4), p. 11, *ante*.

Mayors of Provincial Boroughs.—These provisions differ from those in the M. C. A., 1882, in three ways. The mayor under the M. C. A., 1882, is a justice of the peace for the borough; he has precedence over other justices, and he continues to be a justice the year next after he ceases to be mayor (sect. 155).

Moreover, he is, as chairman of an urban district council, a justice of the peace for the county under the L. G. A., 1894, s. 22.

In London the mayor will be a justice for the county; he will not enjoy any precedence over the other county justices, and he will be a justice only while he is mayor.

Practising Solicitors.—Practising solicitors are disqualified for being justices of any county in which they practise (34 Vict. c. 18). This section removes the disability.

Mayor disqualified from sitting as Justice.—Questions have frequently arisen as to the position of mayors acting as justices when the borough council has been a party to the matter. The question in all cases is, Was the mayor really substantially interested, though not necessarily in a pecuniary sense, in the proceedings so as to be likely to have a real bias in the matter? If so, he ought not to sit as a justice: *Reg. v. Meyer and others*, 1 Q. B. D. 173; *Reg. v. Milledge and others*, 4 Q. B. D. 332.

By sect. 122 of the Public Health (London) Act, 1891, a justice of the peace shall not be incapable of acting in cases arising under the Act by reason of his being a member of any sanitary authority. It has been held that where such a section as this exists, it is not enough to show merely that an adjudicating justice is a member of the council, and, as such, has a pecuniary interest in the result, or that he is a member of the body charged with the duty of prosecuting the offence which he sits to adjudicate upon, but it must be established that he has such a substantial interest in the result of the hearing as to make it likely that he has a real bias in the matter: *Reg. v. Handsley and others*, 8 Q. B. D. 383. But where he acts as a member of the council in directing the prosecution, he must not afterwards sit to hear the summons: *Reg. v. Lee and others*, 9 Q. B. D. 394.

Another consideration must be borne in mind. Where the mayor is a litigant in a matter similar to the other matters before the Court, he is disqualified from acting as a justice: *Reg. v. Justices of Great Yarmouth*, 8 Q. B. D. 525. And where a magistrate takes such an interest in the subject-matter of the litigation as to make a real bias

reasonably probable, he is disqualified from sitting as a magistrate: *Reg. v. Cumberland Justices*, 52 J. P. 502.

Any pecuniary interest in the subject-matter of the litigation will disqualify a magistrate. But by the Justices of the Peace Act, 1867 (30 & 31 Vict. c. 115), it is provided that a justice shall not be incapable of acting by reason only of his being one of several rate-payers liable in common with the others to contribute or to be benefited by any fund to the account of which the penalty payable in respect of the offence would go.

Where a justice is disqualified, it is open to the parties to waive the objection, and if they acquiesce in his acting after knowledge of the disqualification they cannot afterwards object.

Other disqualifications: as to bankruptcy, see 46 & 47 Vict. c. 52, s. 32; 53 & 54 Vict. c. 71, s. 9; as to corrupt practices, 46 & 47 Vict. c. 51, s. 38. A sheriff cannot be a justice: 50 & 51 Vict. c. 55, s. 17.

Section 25.

DEPUTY TOWN CLERK.

25. Deputy town clerk.]—In case of the illness or absence of the town clerk, the borough council may appoint a deputy town clerk to hold office during their pleasure, and all things required or authorised by law to be done by or to the town clerk may be done by or to the deputy town clerk, and no defect in the appointment of a deputy shall invalidate his acts.

Deputy Town Clerk.—There is a similar provision in the M. C. A., 1882: see sects. 17 (sub-sects. 5 and 6) and 237.

Section 26.

WARDS.

26. *Alteration of wards.*—(1.) Whenever the Local Government Board is satisfied that a *prima facie* case is made out for a proposal for the alteration of the number of wards of a metropolitan borough, or of the boundaries of any ward, or of the apportionment of the members of the council among the wards, the Local Government Board may cause such inquiry to be made and such notices to be given as they may think expedient; and if satisfied that the proposal is desirable, may make an order accordingly.

Wards.—The *first* divisions of boroughs into wards and the apportionment of councillors are to be fixed by Order in Council under sect. 2 (2), Lon. G. A.

This section takes away from the L. C. C. one of the powers it inherited from the M. B. W.

See note to sect. 2 (2), Lon. G. A., p. 9, *ante*.

26—(2.) Notice of the provisions of the order shall be given, and copies thereof shall be supplied, in such manner as the Local Government Board may direct.

26—(3.) The expenses of and incidental to the making of the order shall be paid by the borough council.

Section 27.

PROVISIONS AS TO NAMES.

27. *Provisions as to names, first elections, &c.*—(1.) An Order in Council under this Act shall—

- (a) give each of the metropolitan boroughs an appropriate name; and

Name.—By sect. 8, M. C. A., 1882, “the municipal corporation of a borough shall bear the name of the mayor, aldermen, and *burgesses* of the borough, or in the case of a city, the mayor, aldermen, and *citizens* of the city.”

This cannot be exactly followed in the case of the metropolitan boroughs, for the reason that the inhabitant householders or borough electors are not incorporated under this Act, but only the *council* of each metropolitan borough.

As to Westminster, see sect. 1, p. 5, *ante*, and sect. 16 (3) (b), p. 150, *ante*.

- 27** (1)—(b) fix the days, years, and times for the retirement of the first aldermen and councillors; and

Times of Retirement.—This will doubtless follow the form usually set out as the Second Schedule to a charter under the M. C. A.

- 27** (1)—(c) give such directions as to the first meeting of the borough councils, and make such other temporary modifications of the provisions of this Act, as may appear to her Majesty to be necessary or proper for making those provisions applicable in the case of the first constitution of a borough council.

27—(2.) An order in council under this Act may make such provisions as appear necessary for adapting the enactments relating to the registration of electors to the provisions of this Act with respect to the powers and duties of the town clerk and overseers,

and in particular for applying, so far as appears necessary, the law regulating the registration of electors in a municipal borough outside London.

Registration of Electors.—See generally on this sub-section the notes to sects. 2 (5), pp. 25—36, *ante*, 3, p. 47, *ante*, 4 (1), pp. 49—51, *ante*, and 11 (1), p. 109, *ante*. This sub-section contains the necessary provisions supplementary to the sections mentioned.

27—(3) An Order in Council under this Act shall provide for the revised lists of voters in the administrative county of London outside the city being, in the year one thousand nine hundred, printed and signed before the twentieth day of October, and coming into operation as the register for the purpose of borough elections on the first day of November, and may provide for such adjustment of the lists of voters and registers with respect to any alteration under this Act of parish boundaries as may appear required for the purpose of those elections.

Sect. 3 (4), p. 47, *ante*, provides in similar words for the revised lists of voters in subsequent years being printed and signed by the town clerk before the 20th October of each year, to come into operation as the register of borough electors on the 1st November following.

Time for Revision Courts.—The period for holding revision courts was originally from 15th September to 31st October, inclusive: Reg. Act, 1843, s. 33. The Reg. Act, 1878, s. 18 (2), provided that, so far as it related to the burgess list, the revision was to be completed by 12th October; and now by the County Electors Act, 1888, s. 6 (1), the lists of parliamentary voters, and of burgesses, and of county electors, are revised between 8th September and 12th October, both inclusive, and are, moreover, to be revised as soon as possible after 7th September, and 8th September is substituted in the Acts relating to the registration of parliamentary voters for 15th September.

Acceleration of Printing, &c. of Register.—In the ordinary course the register of parochial electors (the register for the purpose of borough elections), as revised by the revising barristers in the autumn of 1900, would not come into force until the 1st January, 1901: Reg. Act, 1843, s. 47—8; Representation of the People Act, 1867, s. 38; Parl. and Mun. Reg. Act, 1878, s. 32; County Electors Act, 1888, s. 7 (3); County Councils (Elections) Act, 1891, s. 2.

The date, 1st November, corresponds with the date fixed in regard

to municipal boroughs by sect. 33 of the Parl. and Mun. Reg. Act, 1878. See also sect. 45 (2), M. C. A., 1882.

Till signed, the revised lists do not constitute the final register. Until that is done, any clerical or typographical error may be corrected so as to make the register correspond with the lists as settled by the barrister. *Brumfitt v. Bremner* (1860), 30 L. J. C. P. 33.

In the year 1894, the Registration Acceleration Act (57 & 58 Vict. c. 32) provided that the first day for the revision of the lists should be the 3rd September, and the last day the 22nd September; and other provisions were made (including one for an additional number of revising barristers) so that the revised lists of voters should be printed, signed, and delivered to the returning officer before the 30th November. On that day the revised lists came into operation for the purposes of the L. G. A., 1894, as the register of parochial electors; but so far as the parliamentary and local government (county council) registers were concerned, no alteration was made: sect. 1 (6). The Act applied only to the registration of parochial electors in that year: sect. 4.

As the registers for the purpose of the borough elections are to be made up and signed by the persons nominated to perform such duty before the 20th October (in 1894 it was the 30th November), in order that the registers may be ready for the first elections on the 1st November—if that date be not delayed under sect. 3 (1)—it is obvious that a similar alteration will have to be made in the dates fixed by law for the holding of the revising barristers' courts. The 20th August is the last day for the sending in of claims and objections to "the overseers," the lists of which are published on the 25th August. Fourteen days from that date are allowed by the Registration Acts for the inspection of the original notices of claims and objections. In 1894 it was deemed necessary (by sect. 1 (b) of the Registration Acceleration Act) to curtail this period for the inspection of the lists of claims and of persons objected to to *nine* days after the 25th August. Having regard to the very heavy character of the work of collating the various lists and of printing the registers, it is possible that a later date may have to be appointed by the Lord President under sect. 3 (1). It must be remembered, too, that the grouping and re-arrangement of areas under the Act may raise practical difficulties in the compilation of the registers, and thereby occasion delay.

It has also to be observed that the "new" register would be in operation on the 1st November for the purpose of the borough elections only; and that, should a parliamentary, county council, or guardians' election take place between that date and the 31st December, 1900,

the "old" register, which would have come into force on the 1st January, 1900, would be the register for any such election, notwithstanding that the newly-revised register would be in existence for the municipal elections. For the purpose of the other elections the later register will not be in operation until the 1st January, 1901.

27—(4.) On the day on which the first borough councillors elected under this Act come into office, the persons who are then members of elective vestries or district boards, and the auditors and overseers of any place to be included in a borough, shall cease to hold office, and until that day the persons who are at the passing of this Act members of elective vestries and district boards, and auditors and overseers, shall continue in office as if the term of office for which they were elected or appointed expired on that day, and, except for the purpose of filling casual vacancies, no further election or appointment shall be held or made.

Continuance of Office.—This is a usual provision in Acts of this character. As to casual vacancies, see pp. 39—41, *ante*. Casual vacancies are not to be filled which occur within six months of the ordinary day of retirement: see pp. 23 and 219. The effect of this sub-sect. upon such provision would appear to be that the ordinary day of retirement was the day upon which the first borough councillors came into office; but this day might not be known six months previously. On the other hand, the words "ordinary day of retirement" might be held to retain their present meaning unaffected by this section.

Section 28.

PROVISIONAL ORDERS OF L. G. B.

28. *Provisional orders and proceedings of Local Government Board.*—(1.) Sections two hundred and ninety-seven and two hundred and ninety-eight of the Public Health Act, 1875, shall apply to any Provisional Order made under this Act as if it were a Provisional Order made under that Act, except that the expenses incidental to the Provisional Order shall be defrayed by the councils concerned in such proportions as the Local Government Board may determine.

Provisional Orders of Local Government Board.—By sect. 5, p. 65, *ante*, the L. G. B. may, on the application of the L. C. C. and of the majority of the borough councils, make a Provisional Order for transferring to all the borough councils any power exercisable by the county council, or for transferring to the county council any power exercisable by the borough councils, and on the joint application of the L. C. C. and the Common Council of the City may make a Provisional Order transferring any power from the county council to the common council, or from the common council to the county council. By sect. 7, p. 83, *ante*, the Board may in such Order adjust the expenses incidental to the transfer.

Public Health Act, 1875.—Sects. 297 and 298 of the Public Health Act, 1875, provide as follows :—

297. With respect to provisional orders authorised to be made by the Local Government Board under this Act, the following enactments shall be made :—

- (1.) The Local Government Board shall not make any provisional order under this Act unless public notice of the purport of the proposed order has been previously given by advertisement in two successive weeks in some local newspaper circulating in the district to which such provisional order relates :
- (2.) Before making any such provisional order, the Local Government Board shall consider any objections which may be made thereto by any persons affected thereby, and in cases where the

(*Public Health Act, 1875, ss. 297, 298.*)

subject matter is one to which a local inquiry is applicable, shall cause to be made a local inquiry, of which public notice shall be given in manner aforesaid (a), and at which all persons interested shall be permitted to attend and make objections:

- (3.) The Local Government Board may submit to Parliament for confirmation any provisional order made by it in pursuance of this Act, but any such order shall be of no force whatever unless and until it is confirmed by Parliament:
- (4.) If while the bill confirming any such order is pending in either House of Parliament, a petition is presented against any order comprised therein, the bill, so far as it relates to such order, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills:
- (5.) An Act confirming any provisional order made in pursuance of any of the Sanitary Acts or of this Act, and any Order in Council made in pursuance of any of the Sanitary Acts, may be repealed, altered, or amended by any provisional order made by the Local Government Board and confirmed by Parliament:
- (6.) The Local Government Board may revoke, either wholly or partially, any provisional order made by them before the same is confirmed by Parliament, but such revocation shall not be made whilst the bill confirming the order is pending in either House of Parliament:
- (7.) The making of a provisional order shall be *prima facie* evidence that all the requirements of this Act in respect of proceedings required to be taken previously to the making of such provisional order have been complied with:
- (8.) Every Act confirming any such provisional order shall be deemed to be a public general Act.

298. The reasonable costs of any local authority in respect of provisional orders made in pursuance of this Act, and of the inquiry preliminary thereto, as sanctioned by the Local Government Board, whether in promoting or opposing the same, shall be deemed to be expenses properly incurred for the purposes of this Act by the local authority interested in or affected by such provisional orders, and such costs shall be paid accordingly; and if thought expedient by the Local Government Board, the local authority may contract a loan for the purpose of defraying such costs.

(a) *I.e.*, by sects. 293 to 296 of this Act, which are printed at p. 182, *post*.

Expenses of Provisional Orders.—It must be observed that the foregoing section (298) is applied subject to the exception that the expenses incidental to the Order shall be defrayed by the councils concerned in such proportions as the L. G. B. may determine. The powers of the L. G. B. in the determination of matters they are authorised to determine are found in sub-sect. 3 of this section. See the notes thereon, p. 183—4, *post*.

28—(2.) Sub-sections one and five of section eighty-seven of the Local Government Act, 1888, shall apply to any proceedings of the Local Government Board under or for the purposes of this Act.

Local Government Act, 1888, s. 87 (1) and (5).—The incorporated provisions of the L. G. A., 1888, are:—

87.—(1.) Where the Local Government Board are authorised by this Act to make any inquiry, to determine any difference, to make or confirm any order, to frame any scheme, or to give any consent, sanction, or approval to any matter, or otherwise to act under this Act, they may cause to be made a local inquiry, and in that case, and also in a case where they are required by this Act to cause to be made a local inquiry, sections two hundred and ninety-three to two hundred and ninety-six, both inclusive, of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to this Act.

(5.) Where the Board cause any local inquiry to be held under this Act, the costs incurred in relation to such inquiry, including the salary of any inspector or officer of the Board engaged in such inquiry, not exceeding three guineas a day, shall be paid by the councils and other authorities concerned in such inquiry, or by such of them and in such proportions as the Board may direct, and the Board may certify the amount of the costs incurred, and any sum so certified and directed by the Board to be paid by any council or authority shall be a debt to the Crown from such council or authority (*b*).

Public Health Act, 1875, ss. 293—296.—Sects. 293 to 296 of the P. H. A., 1875, relating to local inquiries by L. G. B., are set out

(*b*) See also sect. 294, P. H. A., 1875, p. 182, *post*.

in Schedule I. of the P. H. (L.) A., 1891 (54 & 55 Vict. c. 76), being applied by sect. 129 of that Act. They are also applied by the Housing of the Working Classes Act, 1890, s. 85 (2), to inquiries by the L. G. B. thereunder.

Sects. 293 to 296 of the P. H. A., 1875, are as follows:—

293. The Local Government Board may from time to time cause to be made such inquiries as are directed by this Act, and such inquiries as they see fit in relation to any matters concerning the public health in any place, or any matters with respect to which their sanction, approval or consent is required by this Act.

294. The Local Government Board may make orders as to the costs of inquiries or proceedings instituted by, or of appeals to, the said Board under this Act, and as to the parties by whom or the rates out of which such costs shall be borne; and every such order may be made a rule of one of the superior courts of law on the application of any person named therein.

295. All orders made by the Local Government Board in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer, and shall be published in such manner as that Board may direct.

296. Inspectors of the Local Government Board shall, for the purposes of any inquiry directed by the Board, have in relation to witnesses and their examination, the production of papers and accounts, and the inspection of places and matters required to be inspected, similar powers to those which poor law inspectors have under the Acts relating to the relief of the poor for the purposes of those Acts.

Local Inquiries.—It must be noted that where any local inquiry leads to the making of a Provisional Order, the expenses incidental to the Order are governed by sect. 25 (1) of this Act, and this section would not therefore appear to apply to such cases.

Poor Law Inspectors.—The powers of poor law inspectors will be found in 4 & 5 Will. IV. c. 76, s. 12, and 10 & 11 Vict. c. 109, ss. 20, 21: as to these, see p. 133, *ante*. It will be observed that the commissioners appointed by the Committee of Council under sect. 15 (3) to prepare Orders and schemes to be settled by the Committee will have like powers.

28—(3.) Where the Local Government Board are authorised by this Act to determine any matter, it shall be at their option to

determine the matter as arbitrators or otherwise, and, if they elect to determine the matter as arbitrators, the provisions of the Regulation of Railways Act, 1868, respecting arbitrations by the Board of Trade, and the enactments amending those provisions, shall apply as if they were herein re-enacted and in terms made applicable to the Local Government Board and the determination of matters under this Act.

Determination of Matters by the L. G. B.—The matters which the L. G. B. are authorised to determine appear to be the following:—

- (1.) As to the expenses incidental to the transfer of powers under sect. 5 (1) and (3) of this Act: see sect. 7 (1) (a) and notes thereon, pp. 63, 65, *ante*, and p. 83, *ante*.
- (2.) As to the expenses incidental to Provisional Orders: see sect. 28 (1), p. 179, *ante*, and notes thereon.
- (3.) As to the expenses incidental to any proceedings of the L. G. B. under sect. 28 (2) of this Act: see sect. 294 of the Public Health Act, 1875, p. 182, *ante*, and notes thereon.

Effect of the Section.—This sub-section follows sect. 63 of the L. G. A., 1888, as amended by the Local Government (Determination of Differences) Act, 1896. The effect is, that when the L. G. B. are called upon to determine a difference they may at their option proceed as arbitrators, in which case the Acts mentioned as to arbitration will apply, or the Board may adopt the procedure laid down in sect. 87 of the L. G. A., 1888, applied to this Act by sect. 28 (2), *ante*.

The important difference between the two procedures is, that in the case where the Board proceed as arbitrators, the arbitrator may, by the Arbitration Act, 1889, be required to state a case for the opinion of the High Court, whereas if the Board proceed under sect. 87 of the L. G. A., 1888, the Board do not act as arbitrators.

Regulation of Railways Act, 1868.—The incorporated provisions of the Act of 1868 (31 & 32 Vict. c. 119), respecting arbitration by the Board of Trade, are contained in sects. 30 to 32. For the purposes of this Act read L. G. B. for Board of Trade, &c. The first two lines of sect. 30 are not applicable, inasmuch as, instead of one of the parties requiring the appointment of an arbitrator, the L. G. B. have an option to act as arbitrators or otherwise. The text of the sections is as follows:—

30. Whenever the Board of Trade are required to make any award or to decide any difference in any case in which a company is one of the parties, they may appoint an arbitrator to act for them, and his

(*Regulation of Railways Act, 1868.*)

award or decision shall be deemed to be the award or decision of the Board of Trade.

If the arbitrator dies, or in the judgment of the Board of Trade, becomes incapable or unfit, the Board of Trade may appoint another arbitrator.

31. The Board of Trade may fix the remuneration of any arbitrator or umpire appointed by them in pursuance of this or any other Act in any case where a company is one of the parties, and may, if they think fit, frame a scale of remuneration for arbitrators or umpires so appointed by them, and no arbitrator or umpire so appointed by them shall be entitled to any larger remuneration than the amount fixed by the Board of Trade.

32. The provisions of sections eighteen to twenty-nine, both inclusive, of the Railway Companies Arbitration Act, 1859, shall, so far as is consistent with the tenour thereof, apply to an arbitrator appointed by the Board of Trade, and to his arbitration and award, notwithstanding that one of the parties between whom he is appointed to arbitrate may not be a railway company; and in construing those sections for the purpose of this Act the word "companies" shall be construed to mean the parties to the arbitration.

33. (As to costs. Repealed by 32 & 33 Vict. c. 18, ss. 1 and 2, which see.)

Sects. 18 to 29 of the Act of 1859 (22 & 23 Vict. c. 59) regulate the costs of the arbitration, which places them in the discretion of the arbitrator (sect. 27). Except as otherwise agreed, or determined by the award, the costs are to be borne by the parties in equal shares (sect. 28). No awards can be set aside for informality (sect. 24). Awards are to be obeyed (sect. 25). Several awards may be made on part of matters referred, instead of one award on all (sect. 21). Other sections relate to period and procedure.

Section 29.

DOUBTS.

29. *Proceedings in case of doubts as to transfer of powers.*—If any question arises, or is about to arise, as to whether any power, duty, or liability is or is not transferred by or under this Act to the council of any metropolitan borough, or any property is or is not vested in any such council, that question, without prejudice to any other mode of trying it, may, on the application of the council, be submitted for decision to the High Court in such summary manner as, subject to any rules of Court, may be directed by the Court; and the Court, after hearing such parties and taking such evidence (if any) as it thinks just, shall decide the question.

Summary Determination of Doubts as to Transfer.—This section is, *mutatis mutandis*, the same as sect. 29, L. G. A., 1888, and sect. 70 (1), L. G. A., 1894.

There is no appeal from the High Court to the Court of Appeal hereunder, and the Court will not answer abstract questions on the construction of the Act.

Rules of Court have been made under the sections referred to: see Annual Practice, 1899, Vol. II., Part V., pp. 620 and 621.

Until similar rules have been made, the procedure there provided must be followed.

Section 30.

OFFICERS.

30. Existing officers.]—(1.) Where the powers and duties of any authority are transferred by or under this Act to any borough council, the existing officers of that authority shall be transferred to and become the officers of that council. Any assistant overseers, rate collectors, and other officers employed in the performance of duties of overseers within a borough shall also be transferred to and become officers of the council for that borough. The council may abolish the office of any such officer whose office they may deem unnecessary; but any officer required to perform duties such as are not analogous, or which are an unreasonable addition to those which he is at present required to perform, may relinquish his office, and any officer so relinquishing his office, or whose office is abolished, shall be entitled to compensation under this Act.

Transfer of Officers.—The effect of this section appears to be, that all “existing officers” of any authority whose powers and duties are transferred to the borough council will become *ipso facto* officers of the council.

Officers who are not existing officers within the meaning of this section will not so become officers of the borough council; but by sub-sect. 4, p. 194, *post*, a scheme may apply the provisions of this section to them. As to their being entitled to compensation, see note, p. 187, *post*, “Officers entitled to Compensation.”

Powers and Duties.—Def. sect. 34, Lon. G. A., p. 206, *post*.

Existing Officers.—Def. sub-sect. (3), p. 193, *infra*, to mean officers holding office on the 24th February, 1899, and on the 13th July, 1899.

Compare this sect. 27 (1) with sect. 81, L. G. A., 1894; sect. 118, L. G. A., 1888; sect. 309, P. H. A., 1875.

Abolition of Office; Relinquishment of Office.—The third sentence in the sub-section follows sect. 119 (3), L. G. A., 1888. The words as to any officer required to perform duties “such as are not analogous

or are an unreasonable addition" are new. But compare the provision usually inserted in schemes made by the Committee of Council under M. C. Acts : see p. 195, *post*. No time is specified within which an officer must decide to relinquish his office in order to take advantage of the Act ; but sub-sect. (4), *infra*, provides that a scheme may make such provisions as may appear necessary for carrying this section into effect.

Officers entitled to Compensation.—The effect of the section would appear to be as follows :—

These officers fall into two classes :—

(a) *Existing officers transferred to borough council.*—Such officers will become entitled to compensation—

- (1.) Where their office is abolished as unnecessary : sect. 30 (1).
- (2.) On relinquishing their office, where they are required to perform duties such as are not analogous or which are an unreasonable addition to those which they are at present required to perform : sect. 30 (1).
- (3.) Where they suffer any direct pecuniary loss by diminution or loss of fees or salary : L. G. A., 1888, s. 120 (1), p. 189, *post*.

(b) *Officers not transferred.*—A scheme may apply the provisions of this section to any officer who suffers pecuniary loss by reason of this Act—

- (4.) Although he is not transferred to a borough council. It will be noticed that only existing officers are transferred, and they are dealt with above. This will meet the case of an officer not an existing officer of any authority whose powers and duties are transferred (sect. 30 (4)), *e.g.*, any officer of any such authority appointed after the 24th February, 1899 ; p. 194, *post*.
- (5.) Although he is not an officer of an authority whose powers and duties are transferred. It will be noticed that only officers of authorities whose powers and duties are transferred are dealt with above. This will meet the case of any officer of an authority whose powers, &c. are not transferred, whether an "existing" officer or not : sect. 30 (4).

Note the restriction contained in L. G. A., 1888, s. 120 (7), p. 190, *post*, as to persons receiving compensation who are appointed to any other office, or who receive any increase of emoluments of the office held.

Assessment Committees.—The officers of assessment committees who may suffer pecuniary loss by reason of this Act would be within the fifth class of officers in the foregoing classification. As to officers of assessment committees, see sect. 13, p. 117, *ante*.

London County Council Officers.—Any officers of the L. C. C. who may suffer any pecuniary loss by reason of this Act would also appear to be within the fourth sub-section.

Registration Town Clerks.—By sects. 4 (1) and 27 (2), *ante*, the duties of the High Bailiff of Westminster, and the High Bailiff of Southwark, and the parliamentary returning officers for the remainder of the metropolis, as town clerks within the meaning of the Registration Acts, are transferred to the town clerks of the metropolitan boroughs, and the former would appear to be able to obtain compensation as being included in the fourth sub-section.

Office.—See sect. 75 (1), L. G. A., 1894, and sect. 100, L. G. A., 1888.

Fund.—See sub-sects. (2) and (4), *infra*.

30—(2.) Sub-sections four and seven of section eighty-one of the Local Government Act, 1894, shall apply to the existing officers affected by this Act as if references in those sub-sections to the district council were references to the borough council, and all expenses incurred by the borough council in pursuance of those sub-sections shall be paid out of the general rate: Provided that the borough council may, if it thinks fit, take into account continuous service under any authority or authorities to which this Act refers, in order to calculate the total period of service of any officer entitled to compensation under this Act.

Local Government Act, 1894, s. 81 (4) and (7):—

81.—(4.) Every such officer, vestry clerk and assistant overseer, as above in this section mentioned shall hold his office by the same tenure and upon the same terms and conditions as heretofore, and while performing the same duties shall receive not less salary or remuneration than heretofore.

(7.) Section one hundred and twenty of the Local Government Act, 1888, which relates to compensation to existing officers, shall apply in the case of existing officers affected by this Act, whether officers above in this section mentioned or not, as if references in that section to the county council were references to the parish council, or the district council, or board of guardians or other authority whose officer the person affected is when the claim for compensation arises as the case may require. Provided that all expenses incurred by a district council in pursuance of this section shall be paid as general expenses of the

(*Local Government Act, 1894, s. 81 (7).*)

council, and any expenses (a) incurred by a board of guardians in pursuance of this section shall be paid out of their common fund, and any expenses incurred by any other authority in pursuance of this section shall be paid out of the fund applicable to payment of the salary of the offices affected.

Local Government Act, 1888, s. 120.—Sect. 120 of the Local Government Act, 1888, above referred to, is as follows. For “county council” must be read “borough council” :—

120.—(1.) Every existing officer (b) declared by this Act to be entitled to compensation, and every other existing officer, whether before mentioned in this Act or not, who by virtue of this Act, or anything done in pursuance of or in consequence of this Act, suffers any direct pecuniary loss by abolition of office or by diminution or loss of fees or salary, shall be entitled to have compensation paid to him for such pecuniary loss by the county council, to whom the powers of the authority, whose officer he was, are transferred under this Act, regard being had (c) to the conditions on which his appointment was made, to the nature of his office or employment, to the duration of his service, to any additional emoluments which he acquires by virtue of this Act or of anything done in pursuance of or in consequence of this Act, and to the emoluments which he might have acquired if he had not refused to accept any office offered by any council or other body acting under this Act, and to all the other circumstances of the case, and the compensation shall not exceed the amount which, under the Acts and rules relating to her Majesty’s Civil Service (d), is paid to a person on abolition of office.

(2.) Every person who is entitled to compensation, as above mentioned, shall deliver to the county council a claim under his hand setting forth the whole amount received and expended by him or his predecessors in office, in every year during the period of five years next before the passing of this Act, on account of the emoluments for which he claims compensation, distinguishing the offices in respect of which the same have been received, and accompanied by a statutory declaration under the Statutory Declarations Act, 1835 (e), that the same is a true statement according to the best of his knowledge, information and belief.

(a) Expenses are to be paid out of the general rate: sect. 30 (2), *Lon. G. A.*, p. 188, *post*.

(b) See sect. 30 (3), p. 194, *infra*.

(c) See note, p. 192, *post*.

(d) See p. 191, *post*.

(e) See p. 193, *post*.

(*Local Government Act, 1888, s. 120.*)

(3.) Such statement shall be submitted to the county council, who shall forthwith take the same into consideration, and assess the just amount of compensation (if any), and shall forthwith inform the claimant of their decision.

(4.) If a claimant is aggrieved by the refusal of the county council to grant any compensation, or by the amount of compensation assessed, or if not less than one-third of the members of such council subscribe a protest against the amount of the compensation as being excessive, the claimant or any subscriber to such protest (as the case may be) may, within three months (*f*) after the decision of the council, appeal to the Treasury (*g*), who shall consider the case and determine whether any compensation, and if so, what amount ought to be granted to the claimant, and such determination shall be final.

(5.) Any claimant under this section, if so required by any member of the county council, shall attend at a meeting of the council and answer upon oath (*f*), which any justice present may administer (*f*), all questions asked by any member of the council touching the matters set forth in his claim, and shall further produce all books, papers, and documents in his possession or under his control relating to such claim.

(6.) The sum payable as compensation to any person in pursuance of this section shall commence to be payable at the date fixed by the council on granting the compensation, or, in case of appeal, by the Treasury, and shall be a specialty debt due to him from the county council, and may be enforced accordingly in like manner as if the council had entered into a bond to pay the same.

(7.) If a person receiving compensation in pursuance of this section is appointed to any office under the same or any other county council, or by virtue of this Act, or anything done in pursuance of or in consequence of this Act, receives any increase of emoluments of the office held by him, he shall not, while receiving the emoluments of that office, receive any greater amount of his compensation, if any, than, with the emoluments of the said office, is equal to the emoluments for which compensation was granted to him, and if the emoluments of the office he holds are equal to or greater than the emoluments for which compensation was granted, his compensation shall be suspended while he holds such office.

(*f*) See note, p. 193, *post*.

(*g*) *I.e.*, Commissioners of the Treasury, sect. 100, L. G. A., 1888; sect. 7, Superannuation Act, 1859, p. 191, *post*; sect. 12 (2), Interpretation Act, 1889.

(*Local Government Act, 1888, s. 120.*)

(8.) All expenses incurred by a county council in pursuance of this section shall be paid out of the county fund, as a payment for general county purposes (h).

Compensation to Civil Servants on Abolition of Office.—The award of compensation allowances to established civil servants on the abolition of their offices is regulated by sect. 7 of the Superannuation Act (22 Vict. c. 26) of 1859, which provides that:—

“It shall be lawful for the Commissioners of the Treasury to grant to any person retiring or removed from the public service in consequence of the abolition of his office, or for the purpose of facilitating improvements in the organisation of the department to which he belongs, by which greater efficiency and economy can be effected, such special annual allowance by way of compensation as, on a full consideration of the circumstances of the case, may seem to the said Commissioners to be a reasonable and just compensation for the loss of office; and if the compensation shall exceed the amount to which such person would have been entitled under the scale of superannuation provided by this Act, if ten years were added to the number of years which he may have actually served, such allowance shall be granted by special minute, stating the special grounds for granting such allowance, which minute shall be laid before Parliament, and no such allowance shall exceed two-thirds of the salary and emoluments of the office.”

In calculating allowances under this section it is the practice of the Treasury to award as many sixtieths of the officer's emoluments as he has served complete years, with a special addition on account of abolition of office, not exceeding the following scale, viz. :—

Actual Service.					Addition.
20 years or upwards	-	-	-	-	10/60ths.
15 years and less than 20	-	-	-	-	7/60ths.
10 years and less than 15	-	-	-	-	5/60ths.
5 years and less than 10	-	-	-	-	3/60ths.
Under 5 years	-	-	-	-	1/60th.

When the duties of the situation have not been such as to require that the holder should give his whole time to the public service, such deduction is made from the amount of compensation allowance for which he would otherwise be qualified as the Treasury may consider reasonable.

(h) Sect. 30 (2), Lon. G. A.

It must be observed that all awards under this section are at the absolute discretion of the Treasury, and are subject to modification if the circumstances of the particular case require it.

Non-established civil servants who have been employed for not less than seven years in an employment to which they were required to devote their whole time, receive a gratuity not exceeding one pound or one week's pay (whichever is greater) for each year of service, under sect. 4 of the Superannuation Act of 1887.

No gratuity can be granted to non-established civil servants whose duties have not required their whole time.

Considerations in arriving at Compensation.—In arriving at the amount of compensation, regard must be had to the following considerations :—

- (a) There must be a direct pecuniary loss, or the officer must be required to perform duties such as are not analogous or which are an unreasonable addition to those which he has performed, in which case, on relinquishing his office, he is to be compensated ;
- (b) Conditions of appointment, as, *e.g.*, at what notice the engagement may be severed, whether removal from office is subject to consent of L. G. B., &c., as, *e.g.*, vestry clerk under 13 & 14 Vict. c. 57, s. 6 ;
- (c) Nature of office or employment ; whether it is that of a responsible character, as vestry clerk or surveyor, or otherwise ;
- (d) Duration of service. Continuous service under any authority or authorities to which the Act refers may be taken into consideration : see proviso to sect. 30 (2), Lon. G. A., p. 188, *post* ;
- (e) Additional emoluments acquired under or “in consequence of” the Act ;
- (f) emoluments which the officer might have acquired but for his refusal to accept any office offered by the council to which he is transferred ;
- (g) All the other circumstances of the case.

Calculation of Compensation.—The compensation is assessed upon a sworn statement of the officer's emoluments during the period of five years next before the passing of this Act. It would appear that the compensation may be either by way of a capital sum or by way of an annual allowance. As a matter of fact, as soon as the basis upon which the compensation is to be fixed is settled, the compensation may be represented either way, as an annual allowance will have its

equivalent in a capital sum, and a capital sum will have its equivalent in an annuity.

And even if the compensation be by way of annual allowance, there does not appear to be anything to prevent the officer from agreeing to commute his allowance for a capital sum. But where a capital sum is given, it must be noted that a difficulty will arise in the operation of sub-sect. 7 of sect. 120 of the L. G. A., 1888, providing in certain cases for the withholding or suspension of the compensation awarded. It is understood to be the practice of the Treasury in deciding appeals to them under sect. 120 in all cases to grant any compensation by way of annual allowance.

Continuous Service.—The proviso as to continuous service is confined to service under any authority or authorities to which this Act “refers.”

Note, also, that the provision is permissive.

Procedure.—The Statutory Declarations Act, 1835 (5 & 6 Will. IV. c. 62), provides the following form of declaration:—“I, A. B., do solemnly and sincerely declare that . . . , and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act intituled the Statutory Declarations Act, 1835.” It may be made before any justice of the peace, notary public, or other officer authorised by law to administer an oath (sect. 18). The three months named in sect. 120 (4), L. G. A., 1888, are calendar months, exclusive of day of council’s decision, but inclusive of day of appeal: Interpretation Act, 1889, s. 3; *Robinson v. Waddington*, 18 L. J. Q. B. 250, and *Radcliffe v. Bartholomew*, 61 L. J. M. C. 63. Under sect. 120 (5), any member of the council may require the claimant’s attendance at the council meeting, and any member may interrogate him. The mayor will be a justice of the peace *ex officio*, and, under ordinary circumstances, would appear to be the proper person to administer the oath. “Oath” includes affirmation and declaration: Interpretation Act, 1889, s. 3. If the claimant is dissatisfied with the decision of the council, he may appeal to the Commissioners of the Treasury.

30—(3.) For the purposes of this section “existing officers” shall mean officers holding office on the twenty-fourth day of

February one thousand eight hundred and ninety-nine and also at the passing of this Act.

Existing Officers.—Any officer who left or entered the service between the 24th February, 1899, and the 13th July, 1899, would not, therefore, be entitled to compensation under sub-sect. 1 of this section, but see sub-sect. 4, *infra*, and the notes on officers entitled to compensation, p. 187, *ante*.

By sect. 100, L. G. A., 1888, the expression “office” includes *any* place, situation, or employment, and the expression “officer” shall be construed accordingly. As to the meaning of the word “existing” in that Act, see same sect. 100. These definitions were applied to L. G. A., 1894, by sect. 75 (1).

30—(4.) A scheme under this Act may make such provisions as may appear necessary for carrying this section into effect, and if necessary for determining the authority to whom any existing officer is to be transferred, and for applying the provisions of this section to any officer who suffers pecuniary loss by reason of anything in or done under this Act, although he is not transferred to a borough council, and although he is not an officer of an authority whose powers and duties are transferred by or under this Act, and for determining in any such case the fund out of which compensation is to be paid.

Distribution of Officers.—It might seem that a scheme under this sub-section might allocate any “existing officer” to any authority; in other words, an “existing officer” might be transferred by a scheme from a borough in one part of London to another; but having regard to sub-sect. 1 of this section, which provides that the existing officers of any authority whose powers and duties are transferred shall become the officers of the council, it would appear that a scheme will be necessary only where rendered necessary by sects. 17, 18, and 20, *ante*.

There is no power to determine the *office* to which an existing officer may be transferred; but note provision made by sub-sect. (1), p. 186, *supra*, as to an officer being required to perform duties such as are not analogous, or are an “unreasonable” addition.

Distribution of business among existing Officers.—Compare powers given county councils as to distribution of business among existing officers under sects. 119 (2) and 106 (1), L. G. A., 1888.

§§ 30 (4), 31 (1)] COMPENSATION UNDER M. C. ACTS. 195

Compensation under M. C. Acts.—The following clause relating to compensation for existing officers is contained in the scheme, dated 17th April, 1899, for the incorporation of Smethwick, in the county of Stafford :—

“In case any officer of the district council or of any of the public bodies for whom the mayor, aldermen, and burgesses of the borough of Smethwick, or the council of the said borough are respectively substituted, who shall have been employed by the district council or by any of the said public bodies as the case may be, shall not be employed for a period of two years from the commencement of this scheme by the council of the said borough or offered by the said council for such period a position in their employ of a similar character, and of an equal value to that formerly held by him, such officer unless dismissed from his employment for misconduct shall be entitled to be paid, by way of compensation for the loss of his position, out of the funds of, or under the control of, the mayor, aldermen, and burgesses of the borough of Smethwick, such gratuity or annual allowance as on a full consideration of the circumstances of the case may seem to the Lords Commissioners of her Majesty's Treasury, or any two or more of them, to be a reasonable and just compensation for the loss of his position, and the said Lords Commissioners in awarding the said compensation shall be guided by the principles which would be applicable in the case of an award of compensation under the provisions of the Superannuation Act, 1859, to a person retiring or removed from the public service in consequence of the abolition of his office.

Provided that no special minute within the meaning of the said Act, stating any special grounds for granting such allowance, shall be necessary or be made.

Provided that the term “officer” shall include any persons employed by the district council whose salaries or emoluments are payable at intervals of not less than one month, and no other persons.

Provided also that the said Lords Commissioners or any two or more of them shall be the sole judges as to the right, title, or claim of any officer to any compensation whatever, and as to the amount thereof, and the said Lords Commissioners or any two or more of them shall be the only judges upon any question which may arise under this clause; and further, every determination of the said Lords Commissioners upon any such right, title, claim, amount, or question, shall be absolutely final and conclusive, and every such officer shall have such rights only under this clause as the said Lords Commissioners or any two or more of them consider just and reasonable. Any determination of the said Lords Commissioners or any two or more of them may be evidenced by writing under the hands of any two of them.”

A provision (clause 14) in similar terms is contained in the scheme, dated 22nd February, 1898, for the incorporation of Hemel Hempsted, in the county of Hertford.

Section 31.

31. Construction of Acts and savings.]—(1.) Where any Act passed before the passing of this Act contains expressions referring to a borough, those expressions shall not be construed as referring

to a metropolitan borough created by this Act unless applied thereto by or under the provisions of this Act or of any subsequent enactment.

Municipal Boroughs.—By sect. 15 (1) of the Interpretation Act, 1889, the expression “municipal borough” is defined, as respects England and Wales, to mean any place for the time being subject to the M. C. A., 1882; and by sub-sect. 3, the expression “borough,” when used in relation to local government, means a municipal borough as defined in sub-sect. 1.

See also the definition of the word in sect. 100 of the L. G. A., 1888, and in sect. 3 of the Elem. Educ. Act, 1870.

Apart from the fact that the inhabitants of a metropolitan borough are not themselves incorporated under the Act (see p. 5, *ante*), the council of a metropolitan borough will not be able to admit persons of distinction to be honorary freemen of their borough under the Honorary Freedom of Boroughs Act, 1885 (48 & 49 Vict. c. 29), which is hereby excluded.

It will also follow that the members of a metropolitan borough council will not fall within the list of exemptions from service on juries set out in the schedule to the Juries Act, 1872.

31—(2.) Any enactment in any Act, whether general or local, referring to an authority whose powers or duties are transferred by or under this Act to a borough council shall be construed with the necessary modifications, including the substitution of the borough council for that authority and of the borough for the area of that authority.

See also sect. 213 (2), M. C. A., 1882, p. 142, *ante*.

31—(3.) Nothing in or done under this Act shall be construed as altering the limits of any parliamentary borough or parliamentary county.

Parliamentary Borough.—Sect. 15 (3), Interpretation Act, 1889, defines this expression to mean any borough, burgh, place, or combination of places returning a member or members to serve in Parliament, and not being either a county or division of a county, or a

university, or a combination of universities. See also sect. 61, Reprn. People Act, 1867 (30 & 31 Vict. c. 102); sect. 11, Reprn. People Act, 1884 (48 & 49 Vict. c. 3).

Parliamentary County.—By sect. 19 of the Registration Act, 1885 (48 & 49 Vict. c. 15), this expression means a county returning a member or members to serve in Parliament, and where a county is divided for the purpose of such return means a division of such county.

By Reprn. People Act, 1867, s. 61, “county” shall not include a county of a city or county of a town, but shall mean any county, riding, parts or divisions of a county, returning a member or members to serve in Parliament. *Cf.* sect. 100 of the L. G. A., 1888.

31—(4.) Except so far as the areas of parishes and sanitary districts are altered by or under this Act, nothing in this Act shall affect the London (Equalisation of Rates) Act, 1894.

London (Equalisation of Rates) Act, 1894.—The text of the Act is as follows:—

1.—(1.) For aiding the equalisation of the rates in London, the London County Council shall in every year form a fund (in this Act called the Equalisation Fund) equal to a rate of sixpence in the pound on the rateable value of London according to the valuation lists as they stand on the sixth day of April in that year.

(2.) The London County Council shall half-yearly determine the contribution from each parish in London to one half of the equalisation fund, and the grant due from that one half of the fund to each parish.

(3.) They shall determine the contribution by apportioning the amount of half the equalisation fund among the parishes in proportion to their rateable value according to the said valuation lists.

(4.) They shall determine the grant due by apportioning the amount of half the equalisation fund among the sanitary districts in proportion to their population, and where a sanitary district comprises two or more parishes by dividing that grant among those parishes in proportion to their population, with this exception, that where the aggregate of the contributions from the parishes in the district is less than the grant apportioned to the district, the difference shall be paid out of the equalisation fund to the sanitary authority of the district, and no payment towards any equalisation charge shall be required from any parish in the district.

(*London (Equalisation of Rates) Act, 1894.*)

(5.) Subject as aforesaid, where the contribution from a parish—

- (a) is less than the grant due, the difference shall be paid out of the equalisation fund to the sanitary authority of the district forming or comprising the parish ; but
- (b) if it exceeds the grant due to the parish, the council shall, for the special purpose of meeting the excess, levy on the parish a county contribution (called the Equalisation Charge) as a separate item of the county rate.

(6.) Every sum paid under this section to a sanitary authority shall be applied in defraying the expenses of the sanitary authority incurred under the Public Health (London) Act, 1891, and so far as not required for that purpose those incurred in respect of lighting, and so far as not required for that purpose those incurred in respect of streets : Provided that where the district of such sanitary authority comprises two or more parishes, the sum paid shall be apportioned among the parishes in proportion to their population, and the amount so apportioned to each parish shall be credited to the parish in reduction of the rates required from such parish towards the above-mentioned expenses.

(7.) Every sanitary authority to whom a sum is paid under this Act in any year shall, within the prescribed time after the following thirty-first day of March, render to the Local Government Board a true account in the prescribed form showing, for the twelve months preceding the said day, the total amount of the sum so paid, and the total amount of the expenses incurred by the authority under each of the following heads :—

- (a) under the Public Health (London) Act, 1891 ;
- (b) in respect of lighting ; and
- (c) in respect of streets ;

and showing the amount expended in respect of each head out of the sums paid to such authority under this Act.

(8.) Where the Local Government Board under section one hundred and one of the Public Health (London) Act, 1891, are satisfied that a sanitary authority have been guilty of such default as in that section mentioned (i), and have made an order limiting a time for the performance of the duty of the authority, the London County Council shall, if so directed by the Local Government Board, withhold the whole or any part of the payment (if any) next accruing due from the equalisation fund to such sanitary authority.

(i) Printed p. 74, *ante*.

(*London (Equalisation of Rates) Act, 1894.*)

Any sums which may during any financial year be withheld in accordance with the foregoing enactment shall be carried forward to the credit of the equalisation fund in the following year, and the amount to be apportioned among the sanitary districts for determining the grant due shall be proportionately increased.

(9.) The account of the equalisation fund shall be a separate account of the county fund.

2. The Local Government Board shall by order prescribe the forms of contribution orders, precepts, demand notes, and receipts, so far as seems to the Board to be necessary for stating therein as a separate item any equalisation charge, and any credit in respect of a receipt under this Act which affects the sum named therein (a).

3.—(1.) [*Provision for intermediate census on 29th March, 1896. Spent.*]

(2.) The authority making the poor rate in each such parish shall in every year make to the Local Government Board a return of the total number of houses entered in the rate book of their parish. The return shall be made at such time and in such form, and the numbers shall be ascertained, and the return shall be verified, in such manner as may be prescribed. The Local Government Board shall forward such returns to the Registrar General, and thereupon he shall estimate the population of the parish on the sixth day of April in that year, and the population so estimated shall for the purposes of this Act be the population of the parish during the twelve months beginning on that day.

(3.) [*As to the first return under this section. Spent.*]

(4.) If any authority making the poor rate fail to make a return under this section within one month after the time at which such return is required, each of the persons constituting the authority who is in fault shall be liable on summary conviction to a fine not exceeding fifty pounds, and not exceeding ten pounds for every day during which the failure continues after the first conviction for such failure.

4.—(1.) In this Act, unless the context otherwise requires,—

The expression “London” means the administrative county of London.

The expression “sanitary authority” has the same meaning as in the Public Health (London) Act, 1891 (b), but does not include

(a) As to this section, see sect. 11 (3) (f), Lon. G. A., p. 115, *supra*, and note thereon.

(b) Sect. 99 of the P. H. A., 1891.

(*London (Equalisation of Rates) Act, 1894.*)

the port sanitary authority (c), and "sanitary district" means the district of any authority as so defined.

The expression "population" means population according to the last published census for the time being, including the census taken in pursuance of this Act, or in any year in which a census is not taken according to the population estimated by the Registrar General under this Act.

The expression "prescribed" means prescribed by the Local Government Board.

(2.) This Act shall, except for the purposes of section three thereof, come into operation on the thirtieth day of September one thousand eight hundred and ninety-four, and the amount of half the equalisation fund for the half-year beginning on that day shall be equal to threepence in the pound on the rateable value of London according to the valuation lists as they stood on the said day.

(3.) This Act may be cited as the London (Equalisation of Rates) Act, 1894.

Effect of Act on the Equalisation Fund.—Under the foregoing Act every parish contributes to the equalisation fund on the basis of its rateable value, and receives a grant from the fund on the basis of its population; so that where the rateable value is, relatively to population, high, a net contribution has to be paid by the parish, while, where it is low, the parish receives a net grant from the fund. Parishes as settled under the Lon. G. A. will remain the units of levy and distribution.

31—(5.) Nothing in this Act, or in any order or scheme under this Act, shall abridge, alter, or affect the powers, rights, duties, or jurisdiction of the School Board for London over the area which for the time being constitutes the administrative county of London.

School Board for London.—The duties and the powers of school boards are mainly defined by the Elementary Education Acts of 1870, 1873, 1876, 1880, 1891 and 1893, and by the Industrial Schools Acts of 1866, 1879 and 1880, and by the Blind and Deaf Children Act, 1893.

(c) The mayor, commonalty, and citizens of the City of London: sect. 111, P. H. A., 1891. As to the extent of the port of London, see Hunt's "London Local Government," vol. I., note (g), at p. 340.

“For the time being.”—In the Elem. Educ. Act, 1870, the term “metropolis” means the places for the time being within the jurisdiction of the Metropolitan Board of Works under the M. M. A., 1855. This area was created the administrative county of London by the L. G. A., 1888, s. 48 (8). Any alteration in the boundaries of the administrative county under the provisions of the Lon. G. A. will therefore equally affect the area of jurisdiction of the London School Board: see sect. 18, p. 157, *ante*. Under sect. 16 (1) (f), a scheme may make such alterations in the boundaries of the electoral divisions for the purpose of school board elections as may be necessary: see p. 140, *ante*.

32. *Borough councils not to alienate open spaces.*—Nothing in this Act shall authorise any borough council to alienate any recreation ground or other open space dedicated to the use of the public, or any land held on trusts which prohibit building thereon.

Alienation of Land.—Otherwise sect. 6 (5), p. 75, *ante*, enables the borough councils to alienate any land for the time being vested in them, with the consent of the L. G. B.

Under sect. 42 of the M. M. A., 1855, vestries and district boards of works are empowered to hold lands without a licence in mortmain.

Under sect. 11, M. M. A. A., 1856, vestries and district boards may take, by agreement or gift, any land or right or easement in or over land, to be maintained as an open space or pleasure ground; and under sects. 5 and 10 of the Met. Open Spaces Act, 1881, they are empowered to acquire for valuable or nominal consideration any open space situate within their parish or district, and may defray the expenses out of the funds at their disposal, or out of the rates.

By sect. 239 of M. M. A., 1855, where any enclosed garden or ornamental ground is vested in commissioners, &c. for the use of the inhabitants of any square, &c., the maintenance and management are vested in a committee of the inhabitants, appointed in the first week of June in each year; and the vestry or district board of the locality have the duty cast upon them of raising the sums required for defraying the expenses, upon the precept of the committee, by an addition to the general rate levied on the occupiers of the houses, &c. in the

square, &c. By this provision the cost of collection is borne by the parish, the committee receiving the full rate yielded by the property liable.

The L. G. B. have, by their Orders under sect. 33, L. G. A., 1894, conferred on certain London local authorities, upon their application, the powers of a parish council under sect. 6 (c) (iii), with respect to the holding or management of parish property, not being property relating to affairs of the Church or held for an ecclesiastical charity, and the holding or management of village greens, or of allotments, whether for recreation grounds, or for gardens, or otherwise for the benefit of the inhabitants or any of them.

By sect. 16 (1) (c), p. 135, *ante*, a scheme under this Act may make provision for anything which may be done under sect. 33, L. G. A., 1894.

33. *Appointed day and transitory provisions.*—(1.) For the purposes of this Act the appointed day shall be the day on which the members of the borough councils first elected under this Act come into office, or such other day not being more than six months earlier or later, as the Lord President of the Council may appoint, either generally, or with reference to any particular provision of this Act, and different days may be appointed for different purposes and different provisions of this Act, whether contained in the same section or in different sections, or for different boroughs.

“Appointed Day.”—The indefinite character of the “appointed day” is to be noted. Cf. the elaborate definition of “appointed day” in L. G. A., 1894, s. 84; also sect. 109, L. G. A., 1888.

By sect. 3 (1) of this Act, the first elections are to be held on 1st November, 1900, or on such later practicable day as may be fixed by the Lord President of the Council.

Note sect. 37 of Interp. Act, 1889:—“Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or

bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation." See also sect. 32, *ibid.*

33—(2.) Subject to the provisions of any scheme under this Act, and to such adaptations as may be made by Order in Council, sections eighty-five to eighty-eight of the Local Government Act, 1894 (which contain transitory provisions), shall apply in the case of boroughs and borough councils under this Act.

Local Government Act, 1894.—These provisions are :—

85.—(1.) Every rate and precept for contributions made before the appointed day may be assessed, levied and collected, and proceedings for the enforcement thereof taken, in like manner as nearly as may be as if this Act had not passed.

(2.) The accounts of all receipts and expenditure before the appointed day shall be audited, and disallowances, surcharges, and penalties recovered and enforced, and other consequential proceedings had, in like manner as nearly as may be as if this Act had not passed, but as soon as practicable after the appointed day; and every authority, committee, or officer whose duty it is to make up any accounts, or to account for any portion of the receipts or expenditure in any account, shall, until the audit is completed, be deemed for the purpose of such audit to continue in office and be bound to perform the same duties and render the same accounts and be subject to the same liabilities as before the appointed day.

(3.) All proceedings, legal and other, commenced before the appointed day, may be carried on in like manner, as nearly as may be, as if this Act had not passed, and any such legal proceeding may be amended in such manner as may appear necessary or proper in order to bring it into conformity with the provisions of this Act.

(4.) Every valuation list made for a parish divided by this Act shall continue in force until a new valuation list is made.

(*Local Government Act, 1894, s. 85.*)

(5.) The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act, whether public general or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.

86.—(1.) Nothing in this Act shall prejudicially affect any securities granted before the passing of this Act on the credit of any rate or property transferred to a council or parish meeting by this Act; and all such securities, as well as all unsecured debts, liabilities, and obligations incurred by any authority in the exercise of any powers or in relation to any property transferred from them to a council or parish meeting shall be discharged, paid, and satisfied by that council or parish meeting, and where for that purpose it is necessary to continue the levy of any rate or the exercise of any power which would have existed but for this Act, that rate may continue to be levied and that power to be exercised either by the authority who otherwise would have levied or exercised the same, or by the transferee as the case may require.

(2.) It shall be the duty of every authority whose powers, duties, and liabilities are transferred by this Act to liquidate so far as practicable before the appointed day, all current debts and liabilities incurred by such authority.

87. All such bye-laws, orders, and regulations of any authority, whose powers and duties are transferred by this Act to any council, as are in force at the time of the transfer, shall, so far as they relate to or are in pursuance of the powers and duties transferred, continue in force as if made by that council, and may be revoked or altered accordingly.

88.—(1.) If at the time when any powers, duties, liabilities, debts, or property are by this Act transferred to a council or parish meeting, any action or proceeding, or any cause of action or proceeding is pending or existing by or against any authority in relation thereto the same shall not be in anywise prejudicially affected by the passing of this Act, but may be continued, prosecuted, and enforced by or against the council or parish meeting as successors of the said authority in like manner as if this Act had not been passed.

(2.) All contracts, deeds, bonds, agreements and other instruments subsisting at the time of the transfer in this section mentioned, and

affecting any of such powers, duties, liabilities, debts, or property, shall be of as full force and effect against or in favour of the council or parish meeting, and may be enforced as fully and effectually as if, instead of the authority, the council or parish meeting had been a party thereto.

Existing Contracts, Agreements, &c.—Cf. sect. 94, M. M. A., 1855. An action commenced after that Act came into operation, upon a contract for cleansing entered into before its passing under a local Act for a Schedule B. parish, was held to be correctly brought against the new body, as the parties having control of the funds ultimately liable to the payment: *Sinnott v. Whitechapel District Commissioners*, 27 L. J. C. P. 177; 6 W. R. 289; 22 J. P. 290. See action on a bond given by the Corporation of London previously to the passing of the Thames Conservancy Act: *Brown v. Mayor, &c. of London*, 31 L. J. Ch. 280. Also sect. 180, *ibid.*, making provision for discharging liabilities under local Acts relating to paving, &c. A debt incurred by the trustees of Grosvenor Square under a local Act was held transferred to the vestry: *Reg. v. St. George's, Hanover Square*, 32 L. J. Q. B. 160; see also *Reg. v. Stretfield*, 32 L. J. M. C. 236; *Sanson v. Shoreditch Vestry*, 38 L. J. C. P. 286.

34. Definitions.]—In this Act, unless the context otherwise requires,—

The expression “administrative vestry” means a vestry having the powers of a vestry elected for a parish specified in Schedule A. to the Metropolis Management Act, 1855; and the expression “elective vestry” means any vestry elected under the Metropolis Management Act, 1855:

See the notes to sect. 1, p. 3, *ante*.

The expression “rateable value” shall include the value of Government property upon which a contribution in lieu of rates is paid:

Rateable Value.—Cf. sect. 75 (2), L. G. A., 1894, where the expression “rateable value” is defined to mean the rateable value stated

in the valuation list in force, or, if there is no such list, in the last poor rate.

Sect. 45 of the Val. (Met.) Act, 1869 (32 & 33 Vict. c. 67), provides that the valuation lists for the time being in force shall be deemed to have been duly made in accordance with that Act and the Acts incorporated therewith, and shall be conclusive evidence of the "rateable value" for the purpose of any of the following rates which are made during the year that the lists are in force, viz., the county rate (County Rates Acts, 1852 and 1866 (15 & 16 Vict. c. 81; 29 & 30 Vict. c. 78)), the Metropolitan Police Rate (Met. Police Act, 1829 (10 Geo. IV. c. 44, &c.)), the sewers, lighting, general and other rates levied by order of district boards and vestries, sums assessed on any part of the metropolis by the L. C. C. (L. G. A., 1888, s. 40 (8)), assessments for contributions under the Metropolitan Poor Act, 1867, and every other rate, assessment, and contribution levied, made, and required in the metropolis on the basis of value.

Under sect. 17 of the Val. (Met.) Act, 1869, the clerk of the L. C. C. prints and distributes the totals of the gross and rateable values of all the valuation lists in force in the administrative county.

Sect. 64, Met. Poor Act, 1867, likewise makes the rateable value according to the valuation lists in force the basis of contributions for the common fund: see sect. 10, Lon. G. A., 1899, and notes, p. 92, *ante*.

The expressions "powers," "duties," "property," "liabilities," and "powers, duties, and liabilities," have respectively the same meanings as in the Local Government Act, 1888:

Definitions.—These definitions are contained in sect. 100 of the L. G. A., 1888:—

"Powers" includes rights, jurisdiction, capacities, privileges, and immunities.

"Duties" includes responsibilities and obligations.

"Property" includes all property, real or personal, and all estates, interests, easements, and rights, whether equitable or legal, in, to, and out of property real and personal, including things in action, and registers, books, and documents; and when used in relation to any quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority, includes any property which on the appointed day belongs to, or is vested

in, or held in trust for, or would but for this Act have, on or after that day, belonged to, or been vested in, or held in trust for, such quarter sessions, clerk of the peace, justices, board, sanitary authority, or other authority: . . .

“Liabilities” includes liability to any proceeding for enforcing any duty or for punishing the breach of any duty, and includes all debts and liabilities to which any authority are or would but for this Act be liable or subject to, whether accrued due at the date of the transfer, or subsequently accruing, and includes any obligation to carry or apply any money to any sinking fund or to any particular purpose.

“Powers, duties, and liabilities,” includes all powers, duties, and liabilities conferred or imposed by or arising under any local and personal Act.

The expression “adoptive Acts” means the Baths and Wash-houses Acts, 1846 to 1896, the Burial Acts, 1852 to 1885, and the Public Libraries Acts, 1892 and 1893:

Short Titles.—The short and collective titles of these Acts are authorised by the Short Titles Act, 1896 (59 & 60 Vict. c. 14).

The Baths and Wash-houses Acts, 1846 to 1896.—These Acts are—The Baths and Wash-houses Act, 1846 (9 & 10 Vict. c. 74); The Baths and Wash-houses Act, 1847 (10 & 11 Vict. c. 61); The Baths and Wash-houses Act, 1878 (41 Vict. c. 14); The Baths and Wash-houses Act, 1882 (45 & 46 Vict. c. 30); The Baths and Wash-houses Act, 1896 (59 & 60 Vict. c. 59).

The Burial Acts, 1852 to 1885.—These Acts are—The Burial Act, 1852 (15 & 16 Vict. c. 85); The Burial Act, 1853 (16 & 17 Vict. c. 134); The Burial Act, 1854 (17 & 18 Vict. c. 87); The Burial Act, 1855 (18 & 19 Vict. c. 128); The Burial Act, 1857 (20 & 21 Vict. c. 81); The Burial Act, 1859 (22 Vict. c. 1); The Burial Act, 1860 (23 & 24 Vict. c. 64); The Burial Act, 1862 (25 & 26 Vict. c. 100); The Burial Act, 1871 (34 & 35 Vict. c. 33); The Burial Laws Amendment Act, 1880 (43 & 44 Vict. c. 41); The Burial and Registration Acts (Doubts Removal) Act, 1881 (44 & 45 Vict. c. 2); The Burial Boards (Contested Elections) Act, 1885 (48 & 49 Vict. c. 21). Also the City of London Burial Act, 1857 (20 & 21 Vict. c. 35).

The Public Libraries Acts, 1892 and 1893.—These Acts are—The Public Libraries Act, 1892 (55 & 56 Vict. c. 53), and The Public Libraries Amendment Act, 1893 (56 Vict. c. 11). Add the Libraries Offences Act, 1898 (61 & 62 Vict. c. 53).

The expression “local Act” includes a provisional order confirmed by an Act, and the Act confirming the order; and the expression “enactment” includes a provision of any such order.

Local Act.—This definition follows that in sect. 75 (2), L. G. A., 1894. As to what is a local Act, see *Reg. v. London County Council*, (1893) L. R. 2 Q. B. 454; 63 L. J. Q. B. 4; 58 J. P. 21; 9 T. L. R. 601; *Richards v. Easto*, 15 L. J. Ex. 167; 15 M. & W. 251; *Cock v. Gent*, 13 L. J. Ex. 24; 12 M. & W. 234.

“Includes.”—Note generally that the word “includes” is wider than the word “means”; and the former expression means “shall have the following meanings in addition to the popular, or ordinary, meaning.” See *Mayor, &c. of Portsmouth v. Smith* (1883), 13 Q. B. D. 184; 53 L. J. Q. B. 92.

35. Short title and repeal.]—(1.) This Act may be cited as the London Government Act, 1899.

The citation of any Act, instrument, or document by reference to the short title is authorised by sect. 35, Interp. Act, 1889, and Short Titles Act, 1896.

35—(2.) As from the appointed day the enactments mentioned in the Third Schedule to this Act shall be repealed to the extent in the third column of that schedule mentioned.

As to effect of repeal, see sect. 38 of the Interp. Act, 1889.

SCHEDULES.

FIRST SCHEDULE (a).

AREAS WHICH ARE TO BE BOROUGHES.

The parishes of—

Battersea.	Islington.
Bethnal Green.	Kensington.
Camberwell.	Lambeth.
Chelsea.	Paddington.
Fulham.	St. Marylebone.
Hackney.	St. Pancras.
Hammersmith.	Shoreditch.
Hampstead.	

The area consisting of the parishes of Mile End Old Town and St. George's-in-the-East and the districts of the Limehouse and Whitechapel Boards of Works including the Tower of London and the liberties thereof.

The district of the Poplar Board of Works.

The district of the Wandsworth Board of Works.

The area consisting of the parishes of St. George the Martyr, Christchurch, Southwark, St. Saviour, Southwark, and Newington.

The area consisting of the parishes of Rotherhithe, Bermondsey, Horselydown, and St. Olave and St. Thomas, Southwark.

The area of the parliamentary division of Holborn.

The area consisting of the parliamentary divisions of East and Central Finsbury.

The area of the parliamentary borough of Deptford.

The area of the parliamentary borough of Greenwich.

The area of the parliamentary borough of Lewisham.

The area of the parliamentary borough of Woolwich.

The area of the ancient parliamentary borough of Westminster, comprising the parishes of St. Margaret and St. John, Westminster, the parish of St. George, Hanover Square, the parish of St. James, Westminster, the parish of St. Martin-in-the-Fields and the district of the Strand Board of Works, and including the Close of the Collegiate Church of St. Peter, Westminster, and the Liberty of the Rolls.

The area consisting of the parish of Stoke Newington and of the urban district of South Hornsey, or so much thereof as may be incorporated with the county of London under this Act.

(a) See Appendix B., p. 220, *post*.

SECOND SCHEDULE.

PART I.—MINOR POWERS AND DUTIES TO BE TRANSFERRED FROM COUNTY COUNCIL.

Powers and Duties transferred.	Conditions of Transfer.
<p>Power under section eighty-four of the London Building Act, 1894, to license the setting up of wooden structures, and power to take proceedings for default in obtaining or observing the conditions of a licence under that section.</p>	
<p>Power under section one hundred and thirty-four of the London Building Act, 1894, in relation to the removal of unauthorised sky signs.</p>	<p>Subject in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.</p>
<p>Powers under section one hundred and ninety-nine of the London Building Act, 1894, which section relates to the removal of obstructions in streets.</p>	
<p>Power under section twenty-eight of the Public Health (London) Act, 1891, of registering dairymen.</p>	<p>Subject to the power of the London County Council to make byelaws, and in case of default to the provisions of the Public Health (London) Act, 1891, as if the default were a default under that Act.</p>

PART II.—POWERS OF COUNTY COUNCIL TO BE EXERCISED ALSO BY
BOROUGH COUNCILS.

Powers exercisable.	Conditions of Exercise.
Power under section one hundred and seventy of the London Building Act, 1894, which section relates to the demolition of buildings in case of the conviction for an offence against the Act, or byelaws made under it.	The power to be exercised only where the borough council have obtained the conviction.
Power to take proceedings in respect of timber or other articles piled, stacked, or stored in contravention of section one hundred and ninety-seven or section two hundred (11) (h) of the London Building Act, 1894.	The power to be exercised only within the borough.
Powers under sections seventeen to twenty-five of the Metropolis Water Act, 1871, with respect to regulations of water companies.	The power to be exercised only with respect to a water company supplying any part of the borough.
Power under section seven of the Railway and Canal Traffic Act, 1888, to make or appear in opposition to certain complaints.	
Powers under section sixty-five of the Local Government Act, 1888, which section relates to the acquisition of land (b).	The power to be exercised only where the land is required for the purpose of any of the powers or duties of the borough council.
Power to adopt Part III. of the Housing of the Working Classes Act, 1890.	The power to be exercised only within the borough.
Power to make byelaws under section twenty-three of the Municipal Corporations Act, 1882, as applied by section sixteen of the Local Government Act, 1888.	The byelaws to be in force only within the borough, and not to be inconsistent with any byelaws made by the county council.

(b) See next page.

Powers conferred on Borough Councils.—As to these powers, see the notes to sect. 5, p. 63 *et seq.*, *ante*, where they are discussed.

Powers for the Acquisition of Land.—Sect. 65 of the Local Government Act, 1888, which relates to the acquisition of land, is as follows:—

65.—(1.) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.

(2.) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3.) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise for any purpose for which capital may be applied by the council.

Sects. 176, 177 and 178 of the Public Health Act, 1875, referred to are as follows:—

176. With respect to the purchase of lands by a local authority for the purposes of this Act, the following regulations shall be observed; that is to say,

(1.) The Lands Clauses Consolidation Acts, 1845, 1860 and 1869, shall be incorporated with this Act, except the provisions relating to access to the special Act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:

(2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice in the month of December on every owner

(*Public Health Act, 1875.*)

or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands :

- (3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees, and occupiers of lands who have assented, dissented, or are neuter in respect of the taking such lands, or who have returned no answer to the notice ; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires :
- (4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition ; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners, lessees, and occupiers thereof :
- (5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served :

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given, and any notices or orders by this section required to be served on a number of persons having any right in, over, or on lands in common may be served on any three or more such persons on behalf of all such persons.

(*Public Health Act, 1875.*)

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same (c).

178. The Chancellor and Council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may, (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said Chancellor and Council may appear sufficient consideration, the whole or any part of any lands belonging to Her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this Act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said Chancellor and Council may grant and assure to the said authority, under the seal of the said duchy, in the name of Her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

(c) See also note to sect. 6 (5), *Lon. G. A.*, p. 75, *ante*.

THIRD SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
6 & 7 Vict. c. 18.	The Parliamentary Voters (Registration) Act, 1843.	In section 56 the words "or to the town clerk of the borough of Southwark" and the words "and in regard to the borough of Southwark the high bailiff of the said borough."
18 & 19 Vict. c. 120.	The Metropolis Management Act, 1855.	Sections 2; 3; 5; 7; 8 from the beginning to "shall be elected and," and the words "with such other persons as hereinbefore mentioned"; 11; 12; 28 to "every such meeting"; 29; 31 to 42; 55; 56; 57, 58, 60, 61, 66 so far as they relate to district boards and their districts; 58 from "Provided always" to the end of the section; 91 from "save as regards" to "any of the said Acts; and"; 154 from "may sell and dispose of any land" to "just; and any such board or vestry," except in so far as it applies to the Metropolitan Board of Works; 158 from "but every such vestry"; 161 to 165; 166 to 169; 172 to 174; 175 to 179; 192 to 197. In section 198 the words "the said account in abstract" to "printed therewith," and the words "account in abstract, statement, and" wherever they occur. In section 199 the words "according to the provisions of this Act." Sections 237 from "nor shall such parts" to "cleansing"; 238.
25 & 26 Vict. c. 102.	The Metropolis Management Amendment Act, 1862.	In section 8 the words "and the precepts for obtaining payment of moneys required by the board for that purpose." Sections 9 to 12; 14; 15 so far as it relates to vestries and district boards; 16; 37 so far as it relates to district boards; 38; 40; 41.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 102— <i>cont.</i>	The Metropolis Management Amendment Act, 1862— <i>cont.</i>	In section 56 the words "out of the sewers rate to be levied in their parish or district." In section 84 the words "with the previous sanction of the Metropolitan Board of Works" and the words "allowed by the Metropolitan Board."
48 & 49 Vict. c. 23.	The Redistribution of Seats Act, 1885.	The forms of precept in Schedule C. In section 12 the words "and also the town clerk for the new borough within the meaning of the Registration Acts."
54 & 55 Vict. c. 76.	The Public Health (London) Act, 1891.	Sections 102, 140, and the Second Schedule.
55 & 56 Vict. c. 53.	The Public Libraries Act, 1892.	Section 22.
56 & 57 Vict. c. 73.	The Local Government Act, 1894.	In section 31 the words "the local board of Woolwich and"; the words "and the auditors for parishes elected under those Acts, and so far as respects the qualification of persons to be elected as if members of the district boards under the said Acts," and the words "and no person shall ex officio be chairman of any of the said vestries"; and sub-section (2). At the end of section 46 the words "and in the case of London auditors as if they were members of a district council." In section 48, sub-section (4), the words "and of members of the local board of Woolwich"; and in sub-section (5) the words "local board or" and "or auditor."
56 & 57 Vict. c. ccxxi.	The London County Council (General Powers) Act, 1893.	Section 15.
58 & 59 Vict. c. cxxvii.	The London County Council (General Powers) Act, 1895.	Section 42.

APPENDIX A.

VESTRYMEN AND AUDITORS (LONDON) ELECTION ORDER, 1898.

The following is the Fifth Schedule of this Order, referred to in the notes to sect. 2 (5) of the Lon. G. A., p. 23, *ante*. It must be noted that these provisions of the M. C. A., 1882, as applied to metropolitan borough councillors by sect. 2 (5) of the Lon. G. A. and this Order differ, in certain respects, from the same provisions as applied to metropolitan mayors and aldermen by sect. 2 (4) of the Lon. G. A., p. 13, *ante*, and the L. G. A., 1888.

FIFTH SCHEDULE.

PROVISIONS OF THE MUNICIPAL CORPORATIONS ACT, 1882, WITH RESPECT TO THE
ACCEPTANCE OF OFFICE, RESIGNATION, RE-ELIGIBILITY OF HOLDERS OF OFFICE,
AND FILLING OF CASUAL VACANCIES, AS ADAPTED AND ALTERED IN THEIR APPLICATION
TO THE ELECTION OF VESTRYMEN AND TO THE PERSONS ELECTED THEREAT.

Obligation to accept Office or pay Fine.

34.—(1.) Every qualified person elected or deemed to be re-elected to the office of vestryman, unless exempt under this section or otherwise by law, either shall accept the office by making and subscribing the declaration required by this Act within one month after notice of being elected or deemed to be re-elected, or shall, in lieu thereof, be liable to pay to the vestry a fine of such amount, not exceeding fifty pounds, as the vestry by regulations determine.

(2.) If there are no regulations determining fines, the fine shall be twenty pounds.

(3.) The persons exempt under this section are—

Any person disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, and any person who having within five years before the day of election served the office of vestryman for the parish or ward claims exemption within ten days after notice of election or of being declared to be deemed to be re-elected.

(4.) A fine payable under this section shall be recoverable summarily.

(5.) If a person is either elected or deemed to be re-elected as vestryman in more than one ward in the parish for which the election is held, he shall not accept office in respect of more than one of such wards, and if he accepts office or pays the fine for non-acceptance of office in respect of one ward he shall not be liable to a fine for non-acceptance of office in respect of any other of such wards.

(6.) Any person who has been nominated and elected without his consent to his

nomination being previously obtained shall not be liable to a fine under this section.

Declaration on Acceptance of Office.

35. A person elected or deemed to be re-elected to the office of vestryman shall not, until he has made and subscribed before two vestrymen of the parish, or the clerk to the vestry, or, if he is absent from the United Kingdom, before a British Consul, a declaration in the following form or in a form to the like effect, act in the office except in administering that declaration:—

FORM OF DECLARATION ON ACCEPTANCE OF OFFICE.

I, A.B., having been elected [or being deemed to be re-elected] vestryman for the parish of [or ward of the parish of], hereby declare that I take the said office upon myself, and will duly and faithfully fulfil the duties thereof according to the best of my judgment and ability.

Dated this _____ day of _____, 18 ____.

This declaration was made and subscribed before us*

Vestrymen of the above-named } _____
parish. } _____

* If the declaration is made and subscribed before the Clerk or a Consul, adapt form accordingly.

Power to receive Declaration.

239.—(1.) Members of the vestry or the clerk or a British Consul shall have authority to receive the declaration required to be made by a vestryman without any commission or authority other than this Act.

(2.) The declaration, if made before a British Consul, shall be forthwith sent to the clerk to the vestry.

Penalty on acting in Office without making Declaration.

41. If any person acts in the office of vestryman without having made the declaration by this Act required, he shall for each offence be liable to a fine not exceeding twenty pounds, recoverable by action.

Resignation of Office.

36.—(1.) A person elected as vestryman may at any time, by writing signed by him and delivered to the clerk to the vestry, resign the office, on payment of the fine provided for non-acceptance thereof.

(2.) In any such case the vestry shall forthwith declare the office to be vacant, and signify the same by notice in writing, signed by three members of the vestry, and countersigned by the clerk, and fixed on the principal external gate or door of the offices of the vestry, and the office shall thereupon become vacant.

Re-eligibility of Office-Holders.

37. A person ceasing to hold the office of vestryman shall, unless disqualified to hold the office, be re-eligible.

Filling of Casual Vacancies.

40.—(1.) On a casual vacancy in the office of vestryman, an election shall be held in accordance with the Vestrymen and Auditors (London) Election Order, 1898; and the person elected shall hold the office until the time when the person in whose place he is elected would regularly have gone out of office, and he shall then go out of office.

(2.) In case of more than one casual vacancy in the office of vestryman being filled at the same election, not being the ordinary election, the vestryman elected by the smallest number of votes shall be deemed to be elected in the place of him who would regularly have first gone out of office, and the vestryman elected by the

next smallest number of votes shall be deemed to be elected in the place of him who would regularly have next gone out of office, and so with respect to the others ; and if there has not been a contested election, or if any doubt arises, the order of rotation shall be determined by the vestry.

(3.) Non-acceptance of office by a person elected or deemed to be re-elected creates a casual vacancy.

Time for filling Casual Vacancies.

66.—(1.) On a casual vacancy in the office of vestryman, the election shall be held within one month after notice in writing of the vacancy has been given to the chairman of the vestry or to the clerk by two vestrymen.

(3.) The day of election shall be fixed by the clerk to the vestry.

(4.) Nothing in this Act shall authorise or require a returning officer to hold an election to fill a casual vacancy which occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, and the vacancy shall be filled at the next ordinary election.

APPENDIX B.

Proposed Borough.	Acres.	Population, 1896 Census.	Rateable value, 1899.
			£
1. Battersea	2,169	165,115	906,235
2. Bethnal Green	755	129,162	457,519
3. Camberwell	4,450	253,076	1,193,010
4. Chelsea	650	75,196	744,958
5. Fulham	1,701	113,781	639,585
6. Hackney	3,299	213,044	1,100,435
7. Hammersmith	2,286	104,199	610,211
8. Hampstead	2,248	75,449	851,413
9. Islington	3,109	336,764	1,816,925
10. Kensington	2,188	170,465	2,127,537
11. Lambeth	3,941	295,033	1,712,289
12. Paddington	1,256	124,506	1,332,347
13. Marylebone	1,506	141,188	1,608,771
14. St. Pancras	2,672	240,764	1,672,690
15. Shoreditch	648	122,358	708,644
16. Stepney. [Aldgate, Christchurch Spitalfields, Limehouse, Mile-end New-town, Mile-end Old-town, Norton Folgate, Old Artillery- ground, Ratcliff, St. George-in-the-East, Shadwell, Wapping, St. Botolph without Aldgate, and Whitechapel and Tower of London.]	1,765	295,547	1,348,943
17. Poplar. [Bow, Bromley, and Poplar.]	2,333	169,267	746,854
18. Wandsworth. [Clapham, Mitcham (det.), Put- ney, Streatham, Tooting Graveney, and Wandsworth.]	9,106	184,684	1,333,109
19. Southwark. [Christchurch, Newington, St. George-the-Martyr and St. Saviour.]	1,119	206,582	1,158,775
20. Bermondsey. [Bermondsey, Horselydown, Rotherhithe, and St. Olave and St. Thomas.]	1,506	137,585	864,318
21. Holborn. [Furnival's-inn, Gray's-inn, Lin- coln's-inn, Saffron-hill, St. Andrew and St. George, St. Giles and St. George, and Staple- inn.]	409	67,400	836,851
22. Clerkenwell. [Charterhouse, Clerkenwell, Glasshouse-yard, St. Luke and St. Sepulchre.]	588	109,961	890,634
23. Deptford	1,574	107,273	549,759
24. Greenwich. [Charlton, Deptford St. Nicholas, Greenwich, and Kidbrooke.]	3,837	84,429	517,320
25. Lewisham. [Lewisham and Lee.]	7,011	99,962	732,283
26. Woolwich. [Eltham, Plumstead, and Wool- wich.]	8,296	106,477	558,194
27. Westminster. [St. Anne Westminster, St. Clement Danes, St. George Hanover-square, St. James Westminster, St. Margaret and St. John, St. Martin-in-the-Fields, St. Mary-le- Strand, St. Paul Covent-Garden, St. Peter Westminster, Liberty of the Rolls, and Savoy.]	2,555	193,465	4,977,802
28. Stoke Newington. [South Hornsey and Stoke Newington.]	868	50,377	320,089

The above Table is, of course, subject to the Orders in Council and schemes to be made. The names are merely suggestive. Fenge has been excluded.

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